Calendar No. 753

100TH CONGRESS *2d Session*	SENATE	REPORT 100-394

MINORITY BUSINESS DEVELOPMENT PROGRAM REFORM ACT OF 1988

REPORT

OF THE

COMMITTEE ON SMALL BUSINESS UNITED STATES SENATE

TO ACCOMPANY

S. 1993

AMENDING THE SMALL BUSINESS ACT TO IMPROVE THE GROWTH AND DEVELOPMENT OF SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS, ESPECIALLY THROUGH PARTICIPATION IN THE FEDERAL PROCUREMENT PROCESS, AND FOR OTHER PURPOSES

JUNE 22, 1988.—Ordered to be printed

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100TH CONGRESS *2d Session* | SENATE | REPORT 100-394

AMENDING THE SMALL BUSINESS ACT TO IMPROVE THE GROWTH AND DEVELOPMENT OF SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY SOCIALLY AND ECONOMICALLY DISADVANTAGED INDIVIDUALS, ESPECIALLY THROUGH PARTICIPATION IN THE FEDERAL PROCUREMENT PROCESS, AND FOR OTEHR PURPOSES

JUNE 22, 1988.—Ordered to be printed

Mr. BUMPERS, from the Committee on Small Business, submitted the following

REPORT

[To accompany S. 1993]

The Committee on Small Business, to which was referred the bill (S. 1993) to amend the Small Business Act to improve the growth and development or small business concerns owned and controlled by socially and economically disadvantaged individuals, especially through participation in the Federal procurement process, and for other purposes, having considered the same, reports favorably thereon, with amendment, and recommends that the bill, as amended, do pass.

I. STATEMENT OF PURPOSE

First utilized by President Lyndon Johnson as part of his Great Society program to eliminate poverty, the program authorized by Section 8(a) of the Small Business Act has historically been the primary vehicle for guiding federal procurement decisions toward economically disadvantaged minority-owned businesses. The program has served two critical and complementary purposes: first, lending an element of fairness to distribution of taxpayer-financed federal procurement contracts, and second, creating opportunities for minority-owned businesses to overcome their historic disadvantages and compete successfully in our bountiful free enterprise economy. In the last decade, Congress has focused repeatedly on expending the long-term advantages to our society which accrue from fulfillment of this second purpose.

Two recent events have altered the course of this program and, once again, made Congressional intervention necessary. First, a

survey of program graduates conducted by this Committee, under the leadership of Senator Lowell Weicker, Jr. in 1986, revealed enormous shortcomings in both the day-to-day administration of the program and in its long-term effect on participating companies. Second, the still-unfolding scandal surrounding the Wedtech Corporation, which was the beneficiary of exponentially larger federal contract assistance than any other firm in the program's history, has provided the public, the Courts and the Congress with an appalling spectacle of greed, fraud and abuse in both industry and government. The legacy of both greed and incompetence which is Wedtech—while by no means typical or characteristic of either program participants or its administrators—has undermined public confidence in government at the highest levels and threatens to erode public commitment to the purposes of the program. Congressional intervention is necessary if the program is to be brought back on track toward its historic promise of economic opportunity for disadvantaged businesses, their owners and employees.

S. 1993, AS REPORTED BY THE COMMITTEE

[S. 1993, 100th Cong., 2d Sess.]

A BILL To amend the Small Business Act to improve the growth and development of small business concerns owned and controlled by socially and economically disadvantaged individuals, especially through participation in the Federal procurement process, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Minority Business Development Program Reform Act of 1988".

TITLE I—CONGRESSIONAL FINDINGS AND PROGRAM PURPOSES

SEC. 101. FINDINGS.

The Congress finds that—

(1) the Small Business Administration Section 8(a) Minority Small Business program remains a primary tool for improving opportunities for minority-owned businesses in the Federal procurement process and bringing these businesses into the nation's economic mainstream;

(2) in spite of all efforts, too few 8(a) graduates have been prepared by the program to compete successfully in the open marketplace on competitive procurements and many firms have developed an unhealthy dependency on sole-source contracts by the time of graduation from the program;

(3) the application and certification process for bringing new participants in the program is [unordinately] *inordinately* lengthy and burdensome;

(4) the Small Business Administration has often [failed to] *not* efficiently and equitably [administer] *administered* and [manage] *managed* the program, [and in that there have not been] *in a manner that provided* clear lines of responsibility

for implementing and monitoring many of the administrative duties under the program;

(5) many Federal procuring agencies have failed to identify and offer the necessary amount of contract support in order to allow for diversification and growth of minority-owned businesses participating in the program;

(6) both contract support as well as business development expense have been provided by SBA to [only a] *too* few firms, while many other firms have received little or no direct assistance under the program;

(7) the wide-spread perception of undue political influence in the operation and administration of the 8(a) program has significantly contributed to the program's poor image and has deterred utilization of the program both by socially and economically disadvantaged concerns and by Federal procuring [agency managers] *agencies*; and

(8) it is imperative that substantial reforms be accomplished in the 8(a) program in order to promote the Congressionally mandated business development objectives and purposes of the program.

SEC. 102. PURPOSES.

The purposes of this Act are to—

(1) ensure that the benefits of the section 8(a) program accrue to *businesses owned and controlled by* individuals who are both socially and economically disadvantaged;

(2) reaffirm the business development objectives and purposes of the program to ensure that concerns graduating from the program will be better prepared to compete in this nation's economic mainstream;

(3) increase the number of minority-owned *small* businesses from which the United States may purchase articles, equipment, supplies, services, materials, and construction work; and

(4) ensure integrity, competence and efficiency in the administration of both business development services and management and distribution of Federal contracting opportunities to [disadvantaged] *eligible* small businesses.

TITLE II—PROGRAM ORGANIZATION, ELIGIBILITY, AND PARTICIPATION

SEC. 201. OFFICE OF MINORITY SMALL BUSINESS CERTIFICATION.

Section 7(j)(11) of the Small Business Act (15 U.S.C. 636(j)(11)) is amended to read as follows:

"(11)(A) There is established within the Office of Minority Small Business and Capital Ownership Development a Division of Minority Small Business Certification which shall exercise the responsibilities and functions specified in subparagraph (B). The Division shall be administered by a Director [appointed by the Administrator and] *who* shall be responsible to the Associate Administrator for Minority Small Business and Capital Ownership Development. To facilitate the timely exercise of the Division's responsibilities and

functions, an office of the Division shall be established in each regional office of the Administration.

"(B) The responsibilities and functions of the Division of Minority Small Business Certification, to be exercised through its regional offices, shall be to—

"(i) receive applications for certification as Program Participants from small businesses owned and controlled by socially and economically disadvantaged individuals, *and notify such applicant in writing within 15 days of the receipt of such application whether such application is complete and suitable for consideration or whether specific deficiencies make such application unsuitable for evaluation at that time*;

"(ii) review and evaluate applications required of prospective Program [Participants,] *Participants;*

"(iii) [visiting] *visit* the offices and facilities of such applicants when appropriate to [thoroughly] evaluate applications;

"[(iii)] *(iv)* make recommendations regarding certification of a prospective Program Participant to the Director [[for his consideration]];

"[(iv)] *(v)* review periodically the financial and other reports of each Program Participant to confirm its continued Program eligibility, [or] ;

"(vi) review finance and other reports whenever a Program Participant initiates any change in ownership interest or other change which could impair continued Program eligibility;

"[(v)] *(vii)* initiate *through the Director a request for a* termination [proceedings] *proceeding* with respect to a Program Participant deemed to have met one or more of the grounds for termination set forth in paragraph 10(H); [of this section;] and

"[(vi)] *(viii)* [consider] *decide* [all] protests regarding [a small business concerns status as a small business concern owned and controlled by socially and economically disadvantaged individuals for the purpose of] *Program Participants'* eligibility *under paragraphs (4), (5), (6), and (7) of section 8(a)* to participate in the [various programs] *program* authorized by this [Act or section 1207 of Public Law 99-661.".] *subsection.".*

SEC. 202. ELIGIBILITY AND CERTIFICATION.

[(a)] Section 7(j)(10) of the Small Business Act (15 U.S.C. 636(j)(10)) is amended by adding at the end thereof the following new subparagraphs:

"(D)(i) The Associate Administrator for Minority Small Business and Capital Ownership Development shall consider applications received from the Director of the Division of Minority Small Business Certification and *process such applications in accordance with subparagraph (E) of this paragraph.* [issue a certificate as a Program Participant to a small business concern owned and controlled by socially and economically disadvantaged individuals as determined in accordance with paragraphs (4), (5), (6) and (7) of section 8(a) of this Act or deny such application in accordance with subparagraph (E) of this section.]

"(ii) Notwithstanding any other provision of law, a small business concern certified as a Program Participant shall not be eligible to participate in the Program for a period in excess of 8 years, commencing on the date of the award of its first contract under the authority of section 8(a).

"(E)(i) [Within 15 days of the receipt of an application for admission into the Program, an applicant shall be furnished written notification that such application is complete and suitable for consideration or specify the deficiencies which make such application unsuitable for consideration. "(ii)] Not later than 90 days after receipt of a completed application for Program certification, the Associate Administrator for Minority Small Business and Capital Ownership Development shall *issue a certificate as a Program Participant to a small business concern, which is owned and controlled by socially and economically disadvantaged individuals as determined in accordance with paragraphs (4), (5), (6), and (7) of section 8(a), or deny such application.* [render a decision regarding such application in accordance with subparagraph (D)(i).]

"[(iii)] *(ii)* If an applicant is denied certification, the Associate Administrator for Minority Small Business and Capital Ownership Development shall notify the applicant in writing, specifying the reasons for such denial and advising the applicant of the right to request [a reconsideration within 30 days of receipt of such notice of denial. The applicant may make a written request for reconsideration, including therein information and documentation not previously provided, specifically rebutting the basis on which denial was made. If upon reconsideration, the application is again denied, no new application may be accepted for a period of one year from the date of Associate Administrator's action on such request for reconsideration.] *a hearing to contest such denial before the Office of Hearings and Appeals in accordance with the procedures established by such Office. If the Office of Hearings and Appeals sustains such denial, no new application may be accepted for a period of one year from the date of the decision of the Office of Hearings and Appeals.*

"[(iv)] *(iii)* The Associate Administrator, in conjunction with the Director, shall develop procedures and guidelines to minimize the paperwork and reduce the time associated with the certification [process, in accordance with clause (ii)] *process.*

"(F)(i) Any small business concern participating in the Program authorized under this section and eligible for award of contracts under the authority of section 8(a) on the effective date of this section shall be deemed to be a Program Participant *on such date.*

"(ii) Such Program Participant may continue in the Program for a period of time which is the greater of—

"(I) 8 years less the number of years since the award of such [Program Participant's] *small business concern's* first contract under section 8(a), or

"(II) the unexpired portion of its Program [Participant] *Participation* Term established in accordance with [section 7(j)(10) of the Act.] *this section.*

"(iii) This section shall not be deemed to create any Program eligibility for a small business concern owned and controlled by socially and economically disadvantaged individuals, if [prior to the effective date of this section] such [firm] *concern* was—

"(I) graduated from the Minority Small Business and Capital Ownership Development Program by *reason of* the expiration of its Program Participation Term,

"(II) terminated [for cause] from participation in the Program authorized by this section *pursuant to subparagraph (H)* [or for award of a contract under the authority of section 8(a)], or

"(III) deemed otherwise ineligible to receive assistance [authorized] under this section or for the award of a contract under the authority of section 8(a).".

SEC. 203. GRADUATION STANDARDS.

Section 7(j)(10) of the Small Business Act (15 U.S.C. 636(j)(10)), *as amended by section 202,* is [further] amended by adding at the end thereof the following new subparagraph:

"(G) A Program Participant certified as eligible to receive assistance under the authority of this section and eligible to receive contracts under section 8(a) of this Act [shall] *may* be graduated if such Program Participant—

"(i) has been a participant in the Program for the [8-year] period prescribed by subparagraph (D)(ii) or (F) of this [section,] *paragraph,*

"(ii) has exceeded the applicable size standard established by the Administration pursuant to section 3 of this Act, *or*

["(iii) is no longer owned and controlled by socially and economically disadvantaged individuals, as the result of a sale of securities to the public, or]

"[(iv)] *(iii)* determines that it has achieved its business goals and objectives as specified in its most recent business plan established pursuant to [section 7(j)(10)] *subparagraphs* (A) and [(C)] *(D)* and elects to graduate prior to the expiration of its Program Participation Term.

For [the] purposes of this [Act] *Act,* the term ["graduated"] *'graduated'* or ["graduation"] *'graduation'* shall mean [the cessation of a Program Participant's eligibility] *that the Program Participant is recognized as successfully completing its Program Participation Term and is no longer eligible* to receive assistance pursuant to this section or [for] *to receive an* award of a contract under section 8(a) [in recognition of the firm's successful completion of its Program Participation Term].".

SEC. 204. TERMINATION.

Section 7(j)(10) of the Small Business Act (15 U.S.C. 636(j)(10)), *as amended by section 203,* is [further] amended by adding at the end thereof the following subparagraphs:

"(H) The Administration, in accordance with [clause (iii),] *subparagraph (I),* may terminate a Program [Participant from] *Participant's* eligibility for this Program and the program under section 8(a) *prior to graduation,* [of this Act] based [upon] *on* good cause, if—

"(i) such Program Participant—

"(I) fails to conform to the criteria [of] *for* eligibility [as a small business concern owned and controlled] as *a* socially and economically disadvantaged *small business concern,*

"(II) has a consistent pattern of delinquent performance or termination for default with respect to contracts awarded under the authority of section 8(a) of this Act,

"(III) has a consistent pattern of failing to make required submissions or responses to the Administration in a timely manner,

"(IV) is debarred by any contracting agency pursuant to the [Federal Aquisition Regulation (48 CFR 9.4)] *subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation),* or

"(V) *willfully* violates rules and regulations promulgated by the Administration; or

"(ii) any of the owners *or officers* of such Program Participant are convicted of embezzlement, theft, forgery, bribery, falsification or any other offense indicating a lack of business integrity.

This paragraph shall not apply in the event that a Program Participant has been found to have violated the provisions of section 16 (d) or (f). For [the] purposes of this [Act] *Act,* 'terminated' or 'termination' shall mean the total denial of assistance pursuant to this paragraph or section 8(a) prior to graduation (as described in subparagraph (G)) or prior to the time prescribed by subparagraph [(D)] *(C)*(ii).

"[(iii)] *(I)* The Director of the Division of Minority Small Business Certification may initiate a termination [action] *proceeding* by recommending such action to the Associate Administrator for Minority Small Business Capital Ownership Development. Whenever the Associate Administrator deems such termination is appropriate, *within 15 days,* the Program Participant shall be provided a written notice of intent to terminate, specifying the reasons for such action. No Program Participant shall be terminated from the Program *pursuant to subparagraph (H)* without first being afforded *an opportunity for* a hearing [on the record] in accordance with section 8(a)(9) [of this Act]. The Administration shall [conduct] *commence any* such hearing within [120] *60* days of the Program Participant's receipt of the notice of intent to terminate, *unless the opportunity for such hearing is waived in writing by the Program Participant.*".

SEC. 205. CHALLENGING ELIGIBILITY.

Section 7(j)(10) of the Small Business Act (15 U.S.C. 636(j)(10)), *as amended by section 204,* is [further] amended by adding at the end thereof the following new subparagraphs:

"[(I)]*(J)*(i) The Administration [may] *shall* conduct an evaluation of a Program Participant's eligibility for continued participation in the Program whenever it receives specific and credible information alleging that such Program Participant no longer meets the requirements for Program eligibility. *A Program Participant may not be suspended from participation in the Program until a termination proceeding in accordance with subparagraph (H) has been initiated.*

"(ii) Upon making a finding that a Program Participant is no longer eligible, the Administration shall *initiate a termination proceeding in accordance with subparagraph (H).* [provide a written notice to such Program Participant, specifying the grounds for such finding and affording the challenged Program Participant the opportunity to offer a response within 45 days of receipt of the notice of ineligibility.]

"[(J)]*(K)*[(i)] [Any protest challenging the status of a small business concern as a small business concern owned and controlled by socially and economically disadvantaged individuals shall be considered and decided by the Director of the regional office of the Division of Minority Small Business Certification for the region in which such challenged small business concern has its principal place of business.]

"[(ii)] *(i)* A protest, *relating to the solicitation or award of a contract under the authority of section 8(a),* regarding [the eligibility of] a [small business concern as a small business owned and controlled by socially and economically disadvantaged individuals] *Program Participant's eligibility under paragraphs (4), (5), (6), and (7) of section 8(a)* may be filed by an offeror, the contracting officer, or other interested party relating to a contract action under the authority of section 8(a) of this [act] *Act.* [*or section 1207 of Public Law 99-661, or a subcontract action pursuant to section 8(d) of this Act.*] *Such protest shall be in writing and shall specifically allege the grounds upon which the protest is based. In order to be considered, a protest must be filed with the* [*Assistant Regional Administrator for Minority Small Business and Capital Development Ownership*] *regional office in which such challenged Program Participant has its principal place of business* within 5 days of—

"(I) bid opening in the case of a contract or subcontract being awarded by competitive sealed bidding or its equivalent; or

"(II) receipt of notice of the apparent successful offeror in the case of a contract or subcontract being awarded by negotiation, either competitively or noncompetitively.

"[(iii)] *(ii)* The [Director of the] regional office [of the Division of Minority Small Business Certification] shall promptly review the eligibility of the party whose status is being challenged, after giving notice to such party, the party filing the protest, the contracting officer (if other than the party filing

the protest) and any other interested parties [he deems] *deemed* appropriate. The [Director's] review shall include consideration of information submitted by the party whose status is being challenged, the party filing the protest, and other interested parties, if such information is received by the Administration not later than 5 days after the date such party receives the notice of protest. A decision regarding the status of the concern shall be issued *by the Director of the regional office of the Division of Minority Small Business Certification* not later than 15 days after receipt of the protest.

[''(iv) Not later than 5 days after receipt of the Director's decision, the firm whose status is being challenged may file a written appeal to the Associate Administrator for Minority Small Business and Capital Ownership Development, who shall render a decision not later than 5 days after such appeal is filed.]

''[(v)] *(iii)* Within 5 days of receipt of the decision *regarding the protest* [of the Associate Administrator], the [firm] *party* whose status is being challenged may file a written appeal [to] *with* the Administration's Office of Hearings and Appeals.

''[(vi)] *(iv)* Unless otherwise provided by law or regulation, a procurement action need not be suspended pending decision [on appeal to the Associate Administrator or the] *of the* Office of Hearings and Appeals.

''[(vii)] *(v)* The Administration may dismiss a protest without further consideration if it determines such protest is without merit or frivolous.

''[(viii)] *(vi)* Whenever the [administration] *Administration* has reason to believe from its consideration of a protest that a false statement has been made, the matter shall be referred to the agency investigating official designated pursuant to the Program Fraud [and] Civil Remedies Act of 1986 (sections 3801–3812, title 31, United States Code).''.

TITLE III—ENHANCING THE PROGRAM'S BUSINESS DEVELOPMENT ASPECTS

SEC. 301. BUSINESS PLANS.

(a) Section 7(j)(10)(A)(i) of the Small Business Act (15 U.S.C. 636(j)(10)(A)(i)) is amended to read as follows:

> ''(i) assist small business concerns participating in the Program either through public or private organizations to develop and maintain a comprehensive business plan which sets forth the Program Participant's specific business objectives and goals. Such business plan, developed and maintained in conformity with subparagraph (B) shall be designed to result in such Program Participant becoming a *viable* business concern capable of effectively competing in the marketplace upon graduation from the Program.''.

(b) Section 7(j)(10) of such Act is further amended—

(1) by striking subparagraph (C),

(2) by redesignating subparagraph (D) (as added by section 202 of this Act) as subparagraph (C), and

(3) by adding after subparagraph (C), *as redesignated,* the following new subparagraph:

"(D)(i) Promptly after certification under subparagraph (E), a Program Participant shall submit a *Program* business plan as described in clause (ii) of this subparagraph for review by the Business Opportunity Specialist assigned to assist such Program Participant. Such plan, and subsequent revisions submitted under clause (iii) of this subparagraph, shall be approved by the Administration prior to the Program Participant being eligible for award of a contract pursuant to section 8(a).

"(ii) The business plans submitted under this paragraph shall include the following:

"(I) An analysis of market potential, competitive environment, and other business analyses estimating the Program Participant's prospects for profitable operations during the term of Program participation and after graduation.

"(II) An analysis of the Program Participant's strengths and weaknesses with particular attention to correcting any financial, managerial, technical, or personnel conditions which *are likely to* impede such small business concern from winning contracts other than those obtained under section 8(a) of this Act.

"(III) Specific objectives and goals for *the business* development of the Program Participant during the next and succeeding years utilizing the results of the analyses conducted pursuant to subclauses (I) and (II).

"(IV) A transition management plan outlining specific steps to assure profitable business operations after graduation (to be incorporated into the Program Participant's overall business plan during the revision relating to the fifth Program year of the firm's Program [Participant] *Participation* Term).

"(V) Estimates of contract awards pursuant to section 8(a) and from other sources, which the Program Participant will require to meet the specific objectives and goals for the years covered by its approved plan. The estimates established shall be consistent with the provisions of subparagraph [(K)] *(L)* and section 8(a)[(18)(D)].

"(VI) The dollar value of the aggregate awards from the Bid and Proposal Cost [Fund] *Program* to which the Program Participant may be eligible pursuant to section 7(m).

"(iii) Each Program Participant shall annually review its currently approved business plan with its Business Opportunity Specialist and modify such plan as may be appropriate. Any modified plan shall be submitted to the Administration for approval. The currently approved plan shall be considered valid until such time as a modified plan is approved by the Administration. The annual review pertaining to the [fifth] *sixth* and subsequent years of Program participation shall include a veri-

fication of such Program Participant's compliance with the requirement of subparagraph [(K)] *(L)*.".

SEC. 302. COMPETITIVE BID AND PROPOSAL COST [FUND] *PROGRAM*.

[(a) IN GENERAL.—]Section 7 of the Small Business Act (15 U.S.C. 636) is amended by adding at the end thereof the following new [subsection] *subsections*:

["(m)(1) There is hereby established in the Treasury of the United States a separate fund consisting of such amounts as may be appropriated to carry out the purposes of this subsection. Such fund shall be available as a revolving fund to the Administrator for bid and proposal costs without fiscal year limitation.

["(2) The purpose of the Bid and Proposal Cost Fund is to foster the competitiveness of Program Participants through the award of financial assistance to help defray the substantial costs to be incurred in the preparation of offers necessary to effectively compete for the award of government and commercial contracts.

["(3) Program Participants shall be eligible for funding from the Bid and Proposal Cost Fund during—]

"(m)(1) The Administrator is authorized to make available to Program Participants financial assistance to help defray the costs to be incurred in the preparation of offers necessary to effectively compete for the award of government and commercial contracts.

"(2) Program Participants shall be eligible for such bid and proposal cost financial assistance during—

"(A) The first through the [fourth] *fifth* year of the Program Participant's Program Participation Term; *and*

"(B) The [fifth] *sixth* and succeeding years of the Program Participant's Program Participation Term, if the Program Participant has failed to meet the requirements of subsection (j)(10)[(K)]*(L)*.

"[(4)] *(3)* The amount of *such* assistance [from such Fund] which may be [awarded] *provided* to an eligible Program Participant during the succeeding fiscal year shall be annually determined by the Administration [on the basis of] *based on* an analysis conducted in conjunction with the Program Participant during the review of such Program Participant's business plan, but shall not exceed an aggregate of $100,000 in any fiscal year.

"[(5)] *(4)* Subject to regulations promulgated by the Administration, an award of financial assistance in the form of a grant may be made in response to an application from a Program [Participant, for—] *Participant—*

"(A) *for* such direct and indirect costs *(not otherwise reimbursed by the Government)* which [may be incurred by] the Program Participant *has incurred* for the preparation of an offer in response to a competitive contract solicitation; *and*

"(B) in an amount not to exceed the level of bid and proposal cost assistance authorized in the Program Participant's business plan for that fiscal [year.] *year.*".

["(6) Any recipient which is awarded a contract for which it has received bid and proposal cost assistance under this subsection shall be required to repay the Fund an amount equal to 50 percent of the amount received from the Fund to assist in the preparation of the offer that led to such contract award.".]

"(n) Bid and proposal costs incurred by a Program Participant (not otherwise reimbursed by the Administration) shall be allowable costs on cost reimbursement contracts to the full extent permitted under any regulatory formula used by the procuring agency, notwithstanding any limitation on the total amounts otherwise allowable under such formula.".

[(b) AUTHORIZATION FOR APPROPRIATIONS.—There is hereby authorized to be appropriated for the fund established pursuant to subsection (a) the sum of $5,000,000 for each of the fiscal years 1989, 1990, and 1991.]

SEC. 303. MANAGEMENT ASSISTANCE.

Section 7(j)(10)(A), *as amended by section 301,* is [further] amended—

(1) by striking out "and" at the end of clause (v),

(2) by striking out the period at the end of clause (vi) and inserting in lieu thereof a semicolon, and "and", and

(3) by adding at the end thereof the following new clauses:

"(vii) [provide assistance necessary to help small business concerns participating in the Program by] establish[ing] a training program to be delivered at the regional level to instruct Program Participants [in preparing effective proposals to competitive solicitations issued by the various Federal agencies] *on the techniques of successfully obtaining and performing Federal contracts;* and

"(viii) provide assistance to public or private organizations or individuals to conduct seminars to assist Program Participants to develop business plans which will enhance the concern's potential for operating profitably upon [graduating] *graduation* from the Program.".

[SEC. 304. AUTHORITY FOR JOINT VENTURES.

[Section 8(a) of the Small Business Act (15 U.S.C. 637(a)) is amended by adding at the end thereof the following new paragraph:

["(15)(A) The Administrator, on a nondelegable basis, may approve any agreement for a joint venture between a small business concern eligible for assistance under section 7(j)(10) of this section and any other business concern, if the Administrator—

["(i) determine that such joint venture will develop the marketing, business management, or technical performance capabilities of the eligible small business concern, enhancing its ability to successfully win and perform contract opportunities other than those obtained under the authority of this section; and

["(ii) obtains the prior written approval of the Attorney General, after consultation with the Chairman of the Federal Trade Commission.

["(B) No act or omission occurring during the term of any such approved joint venture agreement shall be construed to be within the prohibitions of the antitrust laws or the Federal Trade Commission Act, if undertaken pursuant to and within the scope of any such agreement.

[“(C) No small business concern that enters into such joint venture agreement shall be deemed to be other than a small business concern solely because it is a party to such agreement.

[“(D) No joint venture established under the authority of this paragraph shall be eligible for an award of any contract or subcontract pursuant to sections 8(a), 8(d), 9, or 15 unless such joint venture would have been eligible in the absence of the provisions of this paragraph.

[“(E) The Administrator shall withdraw approval for such joint venture agreement if—

[“(i) he determines that the activities of the joint venture are failing to attain the purposes and objectives for which such joint venture was approved; or

[“(ii) the Attorney General requests its termination, after making a determination that the activities of the joint venture, which would otherwise be deemed to be within the prohibitions of the antitrust laws or the Federal Trade Commission Act, are inimical to the public interest.

[“(F) Each approval of a joint venture agreement and any withdrawal of such an approval shall be published in the Federal Register.”.]

SEC. [305.] *304.* MINORITY BUSINESS DIRECT LOAN PROGRAM.

Section 7(a) of the Small Business Act (15 U.S.C. 636(a)) is amended by adding at the end thereof the following new paragraph:

“(17)[(A)] The Administration is authorized to make loans *directly to Program Participants which are eligible to receive assistance under section 7(j)(10) and 8(a)* for the purchase of equipment, facilities, materials, [supplies] *supplies,* or other necessary production or technical assets, and for working capital [directly to small business concerns which are eligible to receive assistance under section 7(j)(10) and 8(a) of this Act.] Such assistance may be provided subject to the following limitations and restrictions:

“[(i)] *(A)* all loans made under this section shall be of such sound value as to reasonably assure repayment[.],

“[(ii)] *(B)* no financial assistance shall be extended under this subsection if the applicant can obtain credit elsewhere, and

“[(iii)] *(C)* the rate of interest on financings made under this subsection shall be 2 percent [less than] *below* the rate established on direct loans made under paragraph [(11).] *(11).”.*

[“(B) There is hereby established within the Treasury a revolving fund that shall be available to the Administration, without fiscal year limitation, for financing functions performed pursuant to this paragraph. Any repayment received by the Administration with respect to loans made under this paragraph shall be deposited in the fund. All expenses, including administrative expenses, resulting from making or disposing of such loans by the Administration shall be paid from the fund.

[“(C) There are hereby authorized to be appropriated to the fund established by subparagraph (B) $10,000,000 to carry out the provisions of this paragraph relating to the making and servicing of loans. Unobligated funds previously appropriated for business de-

velopment expense from the salaries and expense account shall be transferred into the fund established by subparagraph (B).".]

TITLE IV—BUSINESS DEVELOPMENT THROUGH FEDERAL CONTRACTING OPPORTUNITIES

SEC. 401. DEVELOPMENT OF BUSINESS MIX EMPHASIZING COMPETITIVE CONTRACT AWARDS.

Section 7(j)(10) of the Small Business Act (15 U.S.C. 636(j)(10)), *as amended by sections 205 and 301,* is [further] amended by adding at the end thereof the following *new subparagraphs*:

"[(K)]*(L)*(i) Except as provided in clause (ii), the Administration shall not *make a noncompetitive* award *of* a contract under section 8(a) to a Program Participant unless such Participant certifies at the time of its designation for contract award that the [aggregate] dollar amount of [all] contracts awarded *noncompetitively* to such Program Participant by the Administration under section 8(a) does not exceed the following—

["(I) 80 percent of the total sales if the Program Participant has completed 4 years of its Program Participant Term;

["(II) 70 percent of the total sales if the Program Participant has completed 5 years of its Program Participant Term;

["(III) 55 percent of the total sales if the Program Participant has completed 6 years of its Program Participant Term; or

["(IV) 25 percent of the total sales if the Program Participant has completed 7 years of its Program Participant Term.]

"(I) 70 percent of the Program Participant's new sales during the fifth or subsequent year of its Program Participation Term; or

"(II) 50 percent of the Program Participant's new sales during the seventh year of its Program Participation Term.

"(ii) The Administrator shall take such measures as may be appropriate to assure that not more than 25 percent of a Program Participant's new sales are from noncompetitively awarded contracts in the final year of its Program Participation Term.

"[(ii)] *(iii)* Notwithstanding the requirements of [clause] *clauses* (i) *and (ii),* the Administration may authorize the award of a contract to a Program Participant under section 8(a), if the Administration determines that—

"(I) the Program Participant's total sales from *noncompetitive* section 8(a) contract awards do not exceed the maximum specified percentage by more than 5 percent;

"(II) the Program Participant has a reasonable business expectation of receiving a competitive contract award that will bring such firm into compliance with the percentage

specified in clause (i) [prior to the beginning of the next year of its Program Participation Term]; and

"(III) denial of the contract award under section 8(a) would cause the firm severe economic harm, jeopardizing its future ability to successfully attain the objectives specified in clause (i).

"[(L)] *(M)* Notwithstanding the requirements of subparagraph [(K),] *(L),* the Administrator may authorize the *noncompetitive* award of a contract to a Program Participant under section 8(a), if the Administration determines that the Program Participant—

"(i) [become] *is* eligible for the Program under the authority of subparagraph (F),

"(ii) [obtained under subparagraph (F) a Program Participation Term of 5 or fewer years,] *obtains a Program Participation Term of 5 or fewer years under subparagraph (F),* which years shall be deemed to be such Program Participant's fourth and succeeding years in the Program for [the purpose] *purposes* of this section and section 8(a), and

"(iii) has made a reasonable effort to comply with the provisions of subparagraph [(K),] *(L),* which shall be considered to be goals rather than requirements for [the purpose] *purposes* of evaluating the business activity of such Program Participant.".

SEC. 402. PLANNING 8(a) CONTRACT ACTIVITY.

(a) FORECASTING [CONTRACTING] *CONTRACT* OPPORTUNITIES.—Section 8(a) of the Small Business Act (15 U.S.C. 637(a)) is amended by adding at the end thereof the following new paragraph:

"[(16)]*(15)*(A) Each executive agency reporting to the Federal Procurement Data System contract actions with an aggregate value in excess of $50,000,000 in fiscal year [1986] *1987* and any succeeding fiscal year shall prepare a forecast of expected [contracting] *contract* opportunities or classes of [contracting] *contract* opportunities for the next and succeeding fiscal years that it considers to be suitable for award [under section 8(a) which] *to small business concerns, including those owned and controlled by socially and economically disadvantaged individuals. Such forecast* shall be periodically revised during such year. To the extent such information is available, the agency forecasts shall specify:

"(i) The approximate number of individual contract opportunities (and the number of opportunities within a class).

"(ii) The approximate dollar value, or range of dollar values, for each contract opportunity or class of contract opportunities.

"(iii) The anticipated time (by fiscal year quarter) for the issuance of a procurement request [to the responsible agency contracting.]

["(iv) The activity within the department or agency responsible for the program requirement creating the contracting opportunity.]

"[(v)] *(iv)* The [contracting] activity responsible for the award and administration of the contract.

"(B) The head of each executive agency subject to the provisions of subparagraph (A) [shall furnish such forecasts of expected contracting opportunities suitable for award under section 8(a) to the Administration within 10 days of its availability to such agency head.".] *shall within 10 days of completion furnish such forecasts to—*

"(i) the Director of the Office of Small and Disadvantaged Business Utilization established pursuant to section 15(k) for such agency; and

"(ii) the Administrator.

"(C) Such forecasts shall be available to small business concerns.".

(b) RATE OF CONTRACT SUPPORT AS ELEMENT OF ANNUAL REVIEW OF BUSINESS PLAN.—Section 8(a) of the Small Business Act is further amended by adding at the end thereof the following new paragraph:

"[(17)]*(16)*(A) Each Program Participant shall annually forecast its needs for contract awards under this section for the next Program year and the succeeding Program year during the review of its business plan, conducted pursuant to section [7(j)(10)(K) of this Act] *7(j)(10)(A).*

"(B) Such forecast shall include—

"(i) the aggregate level of contract support (number and dollar value) to be sought under section 8(a), reflecting compliance with the requirements of section 7(j)(10)[(K)] (L),

"(ii) the types of contract opportunities being sought, identified by Standard Industrial Classification (SIC) Code or otherwise,

"(iii) an estimate of the level of contract support (number and dollar value) to be sought on a [noncompetitive] *competitive* basis,

"(iv) an estimate of the level of support (number of applications and estimated dollar value of each) to be sought from the Bid and Proposal Cost [Fund] *Program* under section 7(m), and

"(v) such other information as may be [useful to] *requested by* the Business Opportunity Specialist [in providing] *to provide* effective business development assistance to the Program Participant.".

SEC. 403. CONTRACT AWARDS.

Section 8(a) of the Small Business Act (15 U.S.C. 637(a)), *as amended by section 402,* is amended by adding at the end thereof the following new paragraph:

"[(18)]*(17)*(A) [Except as provided in subparagraphs (B) and (C), the Administration shall award non-competitive contracts under this section to the concern that identifies the] *Except as necessary to implement the policy stated in subparagraph (C), the Administration shall award contracts under this section to the concern recommended by the procuring agency offering the* contract opportunity if—

"(i) the Program Participant is determined to be a responsible contractor with respect to performance of such contract opportunity;

"(ii) the award of such contract would be consistent with the Program Participant's business plan; and

"(iii) the award of the contract would not result in the Program Participant exceeding the requirements established by section [7(j)(10)(K) of this Act] *7(j)(10)(L).*

"(B) Contract awards shall be made to the Program Participants selected through a competition conducted pursuant to subparagraph (D).

"[(B)] *(C)* [*Notwithstanding the preceding paragraph, the*] *The* Administrator may consider the geographical distribution of contracts and may direct the award of any contract under this section, *other than a competitive contract award made pursuant to subparagraph (D) of this paragraph,* to achieve [an] *a more* equitable distribution of contracts among the Administration's various regions and among Program Participants.

["(C)(i) except as provided in clause (ii), the Assistant Regional Administrator for Minority Small Business and Capital Ownership Development in each of the regional offices shall be the contract award official with respect to each contract awarded to a Program Participant under this section.

["(ii) Awards shall be made by the Assistant Regional Administrator to the Program Participant selected by—

["(I) the contracting officer of the agency offering the contracting opportunity to the Administrator, after a restricted competition conducted under the authority of subparagraph (E) of this section; or

["(II) the Assistant Regional Administrator for Minority Small Business and Capital Ownership Development, if the contracting opportunity is being awarded noncompetitively and designation of the Program Participant to receive the contract has been made at the Administration's headquarters.]

"(C)(i) Except for a contract opportunity that is a 'national buy contract', the source selection official for noncompetitive awards under this section shall be the head of the Minority Small Business and Capital Ownership Development Program in the regional office for the region in which the agency making the contract opportunity available is located.

"(ii) The source selection official for a 'national buy contract' shall be designated by the Administrator.

"(iii) For purposes of this subparagraph, the term 'national buy contract' means a contract for the procurement of supplies or services that may require performance in more than one of the Administration's regions and exceeds a dollar threshold specified in regulations promulgated by the Administration.

["(D)(i) Except as provide in clause (ii), a Program Participant shall be ineligible for the award of a contract on a noncompetitive basis under this section, if the expected award price of such contract exceeds by more than 150 percent the total contract price paid to the Program Participant for performance of its largest prior contract.

["(ii) The Assistant Regional Administrator for Minority Small Business and Capital Ownership Development may waive the requirements of subclause (i) upon making a written determination that the Program Participant otherwise eligible to receive the con-

tract award has the managerial, financial, and technical capabilities to perform the contract in accordance with its terms and conditions, specifically taking into consideration all concurrent contractual obligations from Government and non-governmental sources. Such determination shall be based on a thorough evaluation of the Program Participant's business operations, including a physical survey of its offices and facilities, as appropriate.]

"[(E)(i) Except as provided in clause (ii), an] *(D)(i) An* agency offering a [contracting] *contract* opportunity for award under this section shall determine the Program Participant eligible for award of the contract on the basis of a competition restricted to eligible Program Participants, if—

"(I) there is a reasonable expectation that at least two eligible Program Participants will submit offers and that award can be made at a fair market price, and

"(II) the anticipated award price of the contract (including all options) will exceed [$2,000,000,] *$5,000,000.* [if the contract opportunity is for the furnishing of supplies, services (including construction), or leasing real property from the Government for the conduct of a retail enterprise, or

["(III) the anticipated award price of the contract (including all options) will exceed $1,000,000, if the contract opportunity is for any other purpose.

["(ii) Notwithstanding the requirements of clause (i), the agency may decline to conduct the contract competition, if the agency competition advocate designated under section 20 of the Office of Federal Procurement Policy Act (41 U.S.C. 418) approves a justification for a noncompetitive award, which finds—

["(I) a reasonable expectation of award to a specific Program Participant, based upon a survey of the Program Participants known to be potential competitors; and

["(II) that the costs of conducting the anticipated competition will exceed any anticipated savings to the Government resulting from the conduct of a competition in lieu of a noncompetitive negotiation with award at fair market price.]

"[(iii)] *(ii)* The Associate Administrator for Minority Small Business and Capital Ownership Development, on a non-delegable basis, is authorized to approve a request from an agency to award a [contracting] *contract* opportunity under this section on the basis of a competition restricted to eligible Program Participants even if the anticipated award price is not expected to exceed the dollar amounts specified in clause (i)(II) [and (III)].

"(iii) Protests arising out of the solicitation or award of a contract opportunity restricted to competition among eligible Program Participants under the authority of this section shall be eligible for resolution pursuant to—

"(I) subchapter V of chapter 35, title 31, United States Code;

"(II) section 111(h) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(h)); or

"(III) section 33.103 of title 48, Code of Federal Regulations (or any successor regulation).

"[(F)] *(E)* A contract requirement [being fulfilled through a contract awarded to a Program Participant under this section, may next be fulfilled through a contract solicited and awarded after full

and open competition,] *that has been performed through a contract awarded to a Program Participant under this section, may subsequently be offered through full and open competition,* if—

"(i) at the expected time of contract solicitation the incumbent contractor will be a graduate of the Minority Small Business and Capital Ownership Development Program;

"(ii) such contractor requests that the next contract opportunity be solicited on an unrestricted basis; and

"(iii) the agency head, or a designee of such officer, approves the request of such contractor.".

SEC. 404. CONTRACT PERFORMANCE.

Section 8(a) of the Small Business Act (15 U.S.C. 637(a)), *as amended by section 403,* is [further] amended by adding at the end thereof the following new paragraphs:

"[(19)]*(18)*(A) Subject to the provisions of subparagraph (B), a small business concern awarded a contract under this section during the term of its participation in the Minority Small Business and Capital Ownership Development Program shall complete performance of the contract (including any additional requirements flowing from the Government's exercise of any contract options or any contract modifications within the scope of the contract), notwithstanding the fact that the period of contract performance may extend beyond such firm's graduation from the Program.

"(B) In exercising the Government's discretion with respect to contract options and contract modifications, the contracting officer shall limit such contract modifications to those necessary to attain contract performance, avoiding any nonessential expansion of the scope or term of performance and avoiding the exercise of any options (unless such action would have a severe adverse impact on the program or mission being supported by the contract), when the contract is being performed by—

"(i) a contractor who has been terminated for cause from the Program in accordance with section 7(j)(10)(H); or

"(ii) a contractor who, after award of the contract option or modification, is unable to meet the requirements of section [(7)(j)(10)(K)] *7(j)(10)(L).*

"[(20)]*(19)*(A) A contract [(including all options)] awarded pursuant to this subsection shall be performed by the socially and economically disadvantaged small business concern that initially received such contract. Subject to the provisions of subparagraph (B), such contract shall be deemed to be terminated for [default] *the convenience of the Government*, if the eligible concern directly or indirectly transfers the contract to another business concern *during the initial year of performance*, unless the Administrator grants [a] prior written [approval, upon determining] *approval based on a determination* that—

"(i)*(I)* the proposed transferee is a current participant in the Minority Small Business and Capital Ownership Development Program authorized under section [7(j)(10),] *7(j)(10);* and

"[(ii)] *(II) the transferee would otherwise be eligible to receive the award* [*directly.*] *directly; or*

"(ii) the individual upon whom Program eligibility is based is no longer able to exercise control of the firm due to incapacity or death.

"(B) The Administrator, on a non-delegable basis, may waive the requirements of subparagraph (A), if the head of the contracting agency for which the contract is being performed certifies that termination of the contract would severely impair attainment of the agency's program objectives or missions and requests the Administrator to grant such waiver.".

[**"(C) If a contract is terminated pursuant to subparagraph (A), the contractor and any successor in interest shall be jointly and severally liable to the Administration for any reprocurement costs.".**]

SEC. 405. APPEAL OF AGENCY DECISION REGARDING 8(a) CONTRACT OPPORTUNITIES.

Section 8(a)(1)(A) of the Small Business Act (15 U.S.C. 637(a)(1)(A)) is amended by inserting [**immediately**] after the sentence ending "the Administrator." the following: "Not later than 5 days from the date the Administration is notified of a procurement officer's adverse decision, the Administrator shall provide notice of his intent to appeal such adverse decision and within 15 days of such date shall request a reconsideration of the adverse decision by the Secretary *of the department* or agency head. Upon receipt of the notice of intent to appeal, the Secretary of the [**Department**] *department* or the agency head shall suspend further action regarding the procurement until a written decision on the Administrator's request for reconsideration has been issued by such [**officer.".**] *Secretary or agency head. If the Administrator's request for reconsideration is denied, the Secretary of the department* or agency head shall specify the reasons therefor, and the determinations supporting such decision, which shall be made a part of the contract file for the requirement.".

TITLE V—IMPROVED PROGRAM MANAGEMENT AND CONGRESSIONAL OVERSIGHT

SEC. 501. ASSOCIATE ADMINISTRATOR FOR MINORITY SMALL BUSINESS AND CAPITAL OWNERSHIP DEVELOPMENT.

(a) IN GENERAL.—Section 4(b)(1) of the Small Business Act (15 U.S.C. 633(b)(1)) is amended by inserting "who shall be a career appointee in the competitive service or in the Senior Executive Service," after "Associate Administrator for Minority Small Business and Capital Ownership Development".

(b) BUSINESS OPPORTUNITY SPECIALISTS.—Section 7(j)(11) of the Small Business Act (15 U.S.C. 636(j)(11)), as amended by section 201 of this Act, is amended by adding at the end thereof the following new subparagraph:

"(C) In each Small Business Administration field office responsible for assisting one or more Program Participants there shall be a position designated as a Business Opportunity Specialist. To the maximum extent practicable the Administration

shall assure that [a Business Opportunity Specialist is not assigned at any one time more than 20 Program Participants. The employee designated as Business Opportunity Specialist, in addition to other duties and functions specified in this Act, shall—] *an adequate number of Business Opportunity Specialists are assigned to each district office to carry out the responsibilities of this section and section 8(a) and to assist Program Participants.*

[“(i) assist Program Participants to identify and obtain contracts to attain the objectives set forth in the Program Participant's business plan by analyzing the procuring agencies' forecasts of 8(a) contract opportunities and visiting such agencies in furtherance of obtaining such contracts for Program Participants;

[“(ii) assess the progress of assigned Program Participants in achieving the objectives set forth in their business plans by periodically conducting independent reviews and joint meetings with such Participants;

[“(iii) facilitate the delivery of management and technical assistance to assigned Program Participants by coordinating the delivery of other programs of the Administration;

[“(iv) facilitate the transmission of information between Program Participants and the Administration as may be necessary;

[“(v) arrange regular meetings among Program Participants to discuss problems and recommend improvements to the program; and

[“(vi) coordinate the submission and consideration of supplemental information from Program applicants during evaluation of their Program application.]

“(D) The Administration shall take such actions as may be appropriate to ensure that any person employed as a Business Opportunity Specialist [is knowledgeable concerning all resources available to provide assistance to small business concerns and that such person receives training in the Federal procurement process with particular attention to contract administration.”.] *receives adequate periodic training to assure such employee is capable of assisting Program Participants to fully utilize the Program and to meet the requirements of this Act.”.*

SEC. 502. PROHIBITED ACTIONS AND EMPLOYEE RESPONSIBILITIES.

Section 8(a) of the Small Business Act (15 U.S.C. 637(a)), *as amended by section 404,* is [further] amended by adding at the end thereof the following new paragraphs:

“[(21)]*(20)*(A) No person within the employ of the Administration shall, during the term of such employment and for a period of one year after such employment has been terminated, [engaged] *engage* in any activity or transaction specified in subparagraph (B) with respect to any Program Participant certified during such person's term of [employment.] *employment, if such person participated personally and substantially in decisionmaking responsibilities relating to such Program Participant or with respect to the ad-*

ministration of any assistance provided to Program Participants generally under this subsection, section 7(j)(10), or section 7(m).

"(B) The activities and transactions prohibited by subparagraph (A) include—

"(i) the buying, selling, or receiving *(except by inheritance)* of any legal or beneficial ownership of stock *(except publicly-traded stock)* or any other ownership interest or the right to acquire any such interest;

"(ii) the entering into or execution of any written or oral agreement (whether or not legally enforceable) to purchase or otherwise obtain any right or interest described in clause (i); or

"(iii) the receipt of any other benefit or right that may be an incident of ownership.

"(C) Any current or former employee of the Administration who violates this paragraph shall be subject to [a] civil [penalty,] *penalty* under the Program Fraud Civil Remedies Act of 1986 (sections [3801–3812,] *3801–3812 of* title 31, United States Code), except that the administrative remedy may not exceed 300 percent of the maximum gain such employee realized or could have realized as a result of engaging in the activities or transactions prohibited by subparagraph (B).

"[(22)] *(21)*(A) Any employee of the Administration who has authority to approve or disapprove, or direct others to approve or disapprove, any action with respect to any program or activity conducted under this subsection, [or] section 7(j)*(10), or section 7(m)* shall not consider the political affiliation or political activity of any Program applicant, Program Participant or other interested party in the exercise of such discretionary authority. Employees of the Administration shall promptly report to the Inspector General of the Administration any solicitation or direction to consider political affiliation or political activity.

"(B) Any employee who violates subparagraph (A) may also be subject to disciplinary personnel actions to include separation from service, reduction in grade, suspension, or reprimand.

"(C) The activities or transactions prohibited by subparagraph (A) and the penalties provided by subparagraph (B) shall be in addition to, and not in lieu of, any other prohibitions[,] or penalties prescribed under any other provision of law.".

SEC. 503. FALSE REPRESENTATIONS.

[(a) Section 16(d) of the Small Business Act (15 U.S.C. 645(d)) is amended by striking out "shall be punished by a fine of not more than $50,000 or by imprisonment for not more than five years or both." and inserting in lieu thereof the following: "shall—

["(1) be punished by a fine of not more than $100,000 or by imprisonment for not more than five years, or both;

["(2) be subject to the administrative remedies prescribed by the Program Fraud Civil Remedies Act of 1986 (sections 3801–3812, title 31, United States Code);

["(3) be subject to suspension and debarment procedures specified in part 9.4 of the Federal Acquisition Regulation (48 CFR 9.4); and

[“(4) be ineligible for participation in the programs authorized by sections 8(a), 8(d), 9, and 15 of the Small Business Act for a period not to exceed 3 years.”.]

(a) PENALTY FOR MISREPRESENTATION.—Section 16(d) of the Small Business Act (15 U.S.C. 645(d)) is amended to read as follows:

“(d) Whoever misrepresents the status of any concern or person as a ‘small business concern’ or ‘small business concern owned and controlled by socially and economically disadvantaged individuals’, in order to obtain for oneself or another any—

“(A) prime contract to be awarded pursuant to section 9 or 15;

“(B) subcontract to be awarded pursuant to section 8(a);

“(C) subcontract that is to be included as part or all of a goal contained in a subcontracting plan required pursuant to section 8(d); or

“(D) prime or subcontract to be awarded as a result, or in furtherance, of any other revision of Federal law that specifically references section 8(d) for a definition of program eligibility,

shall—

“(A) be punished by a fine of not more than $100,000 or by imprisonment for not more than 5 years, or both;

“(B) be subject to the administrative remedies prescribed by the Program Fraud Civil Remedies Act of 1986 (sections 3801–3812 of title 31, United States Code);

“(C) be subject to suspension and debarment procedures specified in subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation); and

“(D) be ineligible for participation in the programs authorized by sections 8(a), 8(d), 9, and 15 for a period not to exceed 3 years.”.

(b) *MISREPRESENTATION OF SECTION 7 COMPLIANCE.*—Section 16 of the Small Business Act (15 U.S.C. 645) is [further] amended by adding at the end thereof the following new subsection:

“(f) Whoever falsely certifies compliance with the requirements of section 7(j)(10)[(K)]*(L)* of this Act shall be subject to the penalties prescribed in paragraph (d).”.

SEC. 504. REPORT BY PROGRAM PARTICIPANTS.

Section 8(a) of the Small Business Act (15 U.S.C. 637(a)), *as amended by section 502,* is [further] amended by adding at the end thereof the following new paragraph:

“[(23)(A)] *(22)* Small business concerns participating in the Program under section 7(j)(10) and eligible to receive contracts pursuant to this section shall *annually* report to their assigned Business Opportunity Specialist [at least once every 3 months during such concern’s term of participation] *the following*:

“[(i)] *(A)* [a] *A* listing of any agents, representatives, attorneys, accountants, consultants, and other parties (other than employees) receiving compensation to assist in obtaining a Federal contract for such Program Participant[; and].

“[(ii)] *(B)* [the] *The* amount of compensation received by any person listed under clause (i) during the relevant reporting period and a description of the activities performed in return for such compensation.

The Business Opportunity Specialist shall promptly forward such report to the Associate Administrator for Minority Small Business and Capital Ownership [Development.] *Development.*".

["(B) The Associate Administrator shall immediately notify the Inspector General of the Administration of any improper activity or suspicion of improper activity after reviewing such reports.

["(C) The Administrator shall report to the Committees on Small Business of the Senate and the House of Representatives the names of those concerns that have failed to submit a report under this paragraph within 30 days after such report is due.".]

SEC. 505. DATA COLLECTION AND CONGRESSIONAL REPORT.

Section 7(j) of the Small Business Act (15 U.S.C. 636(j)) is further amended by adding at the end thereof the following new paragraph:

"[(13)] *(12)*(A) The Administrator shall develop and implement a process for the systematic collection of data on the benefits derived by the economy of the United States and by [socially and economically disadvantaged individuals as a result of the operations of the Minority Small Business and Capital Ownership Development Program established pursuant to paragraph (10).] *Program Participants.*

"(B) Beginning on April 30, [1990,] *1989,* and each year thereafter, the Administrator shall submit a report to the Committees on Small Business of the Senate and the House of Representatives on the Minority Small Business and Capital Ownership Development Program [that shall include] *which includes*—

["(i) the average net worth of individuals who own and control concerns certified under section 7(j)(10) during the preceding fiscal year, stratifying the net worths of all such individuals in $50,000 increments. For the first report required pursuant to this paragraph, the Administration shall also provide the data specified in the preceding sentence for all individuals whose status is socially and economically disadvantaged has provided the basis for a certification of a firm which is currently a Program Participant;

["(ii) the employment and total sales of each Program Participant, and the costs of conducting the Program and any other associated expenses during the fiscal year covered by the report;

["(iii) a listing and evaluation of those Program Participants graduated or terminated from the Program during the preceding three fiscal years. The evaluation shall identify the concerns still actively engaged in business operations; those that have ceased or substantially curtailed such operations, including the reasons for such actions; and those concerns that have been acquired by firms owned and controlled by other than socially and economically disadvantaged individuals;

["(iv) a listing of all participants in the Minority Small Business and Capital Ownership Development Program during the preceding year identifying, by region, for each firm: the name of the concern; the race or ethnicity, and gender of the principal owners; the number and dollar value of all contracts awarded (competitively and noncompetitively) under section

8(a) during the preceding year; the identity of the awarding agency for each such contract; the dollar amount of any advance payments received by each Program Participant;]

"[(v)] *(i)* the total dollar value of contracts (including options) awarded (competitively and noncompetitively) during the preceding fiscal year under section 8(a) and [such] amount *of such contracts* expressed as a percentage of total sales of—

"(I) all Program Participants in the Minority Small Business and Capital Ownership Development Program during such year; and

"(II) all Program Participants broken down to reflect each year of the eight-year Program Participation [Term.] *Term;*

"[(vi)] *(ii)* the dollar value of contracts (including options) awarded (competitively and noncompetitively) under section 8(a), stratified at such dollar increments as the Administration deems appropriate, for each four digit standard industrial classification code under which such contracts were [classified.".] *classified; and*

"(iii) such other information as the Administration deems appropriate.".

SEC. 506. DEFINITIONS.

Section 8(a)(13) of the Small Business Act (15 U.S.C. 637(a)(13)) is amended to read as follows:

"(13) For purposes of this subsection, the term 'Indian tribe' means—

"(A) any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation (within the meaning of the Alaska Native Claims Settlement Act) which—

"(i) is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or

"(ii) is recognized as such by the State in which such tribe, band, nation, group, or community resides; and

"(B) any community service organization serving Native Hawaiians in the State of Hawaii which—

"(i) is a not-for-profit organization chartered by the State of Hawaii;

"(ii) is controlled by Native Hawaiians; and

"(iii) whose business activities will principally benefit such Native Hawaiians.".

TITLE VI—[OTHER AMENDMENTS] *ANNUAL CONTRACT GOALS; REPORT; EFFECTIVE DATE*

SEC. 601. ANNUAL CONTRACTING GOALS.

Section 15(g) of the Small Business Act (15 U.S.C. 644(g)) is amended—

(1) by striking out "The head" and inserting in lieu thereof "(2) The head",

(2) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively, and

(3) by adding at the beginning [thereof] the following new paragraph:

"(1) The President shall annually establish goals for procurement contracts awarded to small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals. The goal for participation by small business concerns shall be established at not less than 20 percent of the total value of [procurement contracting for fiscal year 1989 through fiscal year 1993] *all prime contract awards for each of the fiscal years 1989 through 1993*, and at 25 percent *of such awards* for fiscal year 1994 and [for] each fiscal year thereafter. The goal for participation by small business concerns owned and controlled by socially and economically disadvantaged individuals shall be established at not less than 5 percent of the total value of [procurement contracting for fiscal year 1989 through fiscal year 1993] *all prime contract and subcontract awards for each of the fiscal years 1989 through 1997*, and at 10 percent *of such awards* for fiscal year 1998 and [for] each fiscal year thereafter. In calculating whether the Government-wide goal for participation by small business concerns has been attained, awards to small business concerns owned and controlled by socially and economically disadvantaged individuals shall not be counted.".

SEC. 602. PRESIDENTIAL REPORT ON ATTAINMENT OF PARTICIPATION GOALS.

Section 15(h) of the Small Business Act (15 U.S.C. 644(h)) is amended—

(1) by striking out "(h)" and inserting in lieu thereof "(h)(1)";

(2) by striking out the last sentence of subsection (h)*(1)*, and

(3) by adding at the end thereof the following new paragraph:

"(2) [Annually the Administration shall] *The Administration shall annually* compile and analyze the reports submitted by the individual agencies pursuant to paragraph (1) and *shall* submit them to the President. The Administration's submission to the President shall include the following:

"(A) The Government-wide goals for participation by small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals and the performance in attaining such goals.

"(B) The goals set by each agency and their performance in attaining their individual goals.

"(C) An analysis of why the Government-wide goals or individual agency goals were not attained and the actions planned to achieve the goals in the succeeding fiscal year.

"(D) The number and dollar value of contracts awarded to small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals through—

"(i) non-competitive negotiation,

"(ii) competition restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals,

"(iii) competition restricted to small business concerns, and

"(iv) unrestricted [competitions,] *competitions* for each agency and on a Government-wide basis.

"(3) The President shall include the information required by paragraph (2) in the annual report to the Congress on the State of Small Business, pursuant to section 303(a) of [Public Law 96-302 (Small Business Economic Policy Act of 1980] *the Small Business Economic Policy Act of 1980 (15 U.S.C. 631b)*).".

SEC. 603. SUBCONTRACTING PROGRAM COMPLIANCE.

Section 8(d)(4)(E) of the Small Business Act (15 U.S.C. 637(d)(4)(E)) is amended—

(1) by striking out "(E)" and inserting in lieu thereof "(E)(i)", and

(2) by adding at the end thereof the following new clause:

"(ii) Each contract subject to the requirements of this paragraph or paragraph (5) shall contain a provision providing for the payment of liquidated damages in the event that the prime contractor fails to make a good faith effort to comply with the requirements contained in paragraph (3) or with any subcontracting plan required of such contractor under the authority of this subsection. The agency awarding the contract shall ensure that the goals offered by the apparent successful bidder or offeror are not substantially less than its actual performance on prior contracts.".

SEC. 604. RELATIONSHIP WITH OTHER PROCUREMENT PROGRAMS.

Section 15(m) of the Small Business Act (15 U.S.C. 644(m)) is amended to read as follows:

"(m)(1) Each agency subject to the requirements of section 1207 of Public Law 99-661 shall, when implementing such requirements—

"(A) establish policies and procedures that insure that there will be no reduction in the number or dollar value of contracts awarded pursuant to this section and section 8(a) in order to achieve any goal or other program objective; and

"(B) [implement the program authorized by section 1207 of Public Law 99-661 in a manner that] *assure that such requirements* will not alter or change the procurement process used to implement this section or section 8(a).

"(2) All procurement center representatives (including those referred to in subsection (k)(6)), in addition to such other duties as may be assigned by the Administrator, shall—

"(A) monitor the performance of the procurement activities to which they are assigned to ascertain the degree of compliance with the requirements of paragraph (1);

"(B) report to their immediate supervisors all instances of non-compliance with such requirements; and

"(C) increase, insofar as possible, the number and dollar value of procurements that may be used for the programs established under this section, section 8(a), and section 1207 of Public Law 99-661.".

SEC. 605. AUTHORIZATIONS.

(a) There is hereby authorized to be appropriated for fiscal year [1988 such sums as may be necessary to hire] *1989 the sum of $3,500,000 to employ 70* additional personnel to carry out the provisions and purpose of sections 201 and 501(b) of this Act.

(b) There is hereby authorized to be appropriated to the Business Loan Investment Fund the sum of $5,000,000 each year for fiscal years 1989, 1990, and 1991, for the purpose of reimbursing Program Participants for costs incurred in the preparation of offers pursuant to section 7(m) of the Small Business Act (15 U.S.C. 636(m)).

(c) There is hereby authorized to be appropriated to the Business Loan Investment Fund the sum of $10,000,000 each year for fiscal years 1989, 1990, and 1991, for the purpose of providing direct loans to Program Participants pursuant to section 7(a)(17) of the Small Business Act (15 U.S.C. 636(a)(17)).

(d) No funds are authorized to be appropriated to the Administration for the purpose of making grants of financial assistance under the so called "Business Development Expense" program to any firm participating in the programs authorized by section 7(j)(10) or section 8(a) of the Small Business Act (15 U.S.C. 636(j)(10) and 637(a)).

SEC. [701.] *606.* EFFECTIVE DATES.

[The] *(a) Except as provided in subsection (b), the* amendments made by this Act shall become effective within 180 days after the date of the enactment of this Act.

(b) Section 7(k)(10)(F) of the Small Business Act (15 U.S.C. 636(j)(10)(F)), as added by section 202 of this Act, shall become effective on June 1, 1988, or the date of enactment of this Act, whichever is earlier.

II. History and Background

A. LEGISLATIVE HISTORY OF 8(a) PROGRAM

Following several Congressional hearings and investigations which revealed abuses in the 8(a) program by contractors and poor management by SBA, the Committee concluded in the late 1970's that as administered by SBA the program lacked a specific mission except to provide contract assistance and had failed to foster "business development which would permit participating minority businesses to competitively operate in the private sector without a dependency on Government contracts." S. Rpt. 95–1140. Thus, Public Law 95–507, enacted on October 24, 1978, made significant amendments to the Small Business Act to redesign the operation of the SBA minority business program. The intent of the law was to shift the program's focus from that of contract assistance to business development.

In providing a statutory structure, among other changes, the new law redefined 8(a) program eligibility. In order to be admitted and to continue in the program the law required that firms be at least 51 percent owned, and the day-to-day management and operation of the business be controlled, by socially and economically disadantaged individuals. Socially disadvantaged individuals were defined as including but not limited to Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans and other mi-

norities as determined by the SBA through regulations. The law also established the Office of Minority Small Business and Capital Ownership Development, headed by an Associate Administrator who was given the responsibility for operation of the 8(a) program and authority under section 7(j) of the Small Business Act to provide management and technical assistance to minority firms. The law also directed the Administration to assist firms to develop business plans which would be the roadmap for development into competitively viable businesses. Underlying this restructuring of the program was the premise that after a period of receiving assistance in the SBA 8(a) program, firms would "graduate," having achieved the degree of independence that would aid their survival in the private marketplace.

Further amendments were made in 1980 with the adoption of Public Law 96-481, which required the SBA to establish program completion dates or "graduation dates" for all firms participating in the 8(a) program. This law was the response to the Committee's finding that SBA had paid little or no attention to the firm's business plans and the frequent criticism that few firms had left the 8(a) program as the result of completion of their goals. The Committee was concerned that SBA had not moved in a timely fashion to establish criteria or to graduate firms, many of which had been in the program almost since its inception. This law sought to refocus SBA's attention on the business plans and objectives of the 8(a) firms in the program. To ensure that this take place, the law required full implementation within 18 months of enactment.

SBA promulgated regulations to implement Public Law 96-481 which established the current system of Fixed Program Participation Terms (FPPT's) and it negotiated completion dates with all firms in the program. Under this scheme, firms' participation was limited to five years, with a possible one-time extension of up to two years, for a maximum term of seven years. The terms actually granted to firms, including extensions, have varied substantially in different SBA regions. The Committee has been besieged with complaints that some regions have awarded extensions stingily or grudgingly, if at all. Others have made extensions a matter of course. This inconsistency has been apparent to both program firms and the Committee, and will be eliminated by S. 1993's implementation of a fixed 8-year term for all program firms. This and other shortcomings in program management were addressed in the Committee's 1986 survey, and this legislation seeks once again to alleviate problems in the program.

B. THE COMMITTEE'S SURVEY OF PROGRAM GRADUATES

During the 99th Congress and under Senator Lowell Weicker's chairmanship, the Committee conducted the first national study of firms that had graduated from the Minority Business/Capital Ownership and Development (MSB/COD) program pursuant to Public Law 96-481. Results of the survey were released at a full Committee hearing chaired by Senator Dale Bumpers on May 12, 1987. A field hearing on the survey was held in Boston on September 2, 1987, chaired by Senator John Kerry. The results of the survey were released as S. Rpt. 100-29, "Survey of Graduates of the Small

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Business Administration Section 8(a) Minority Business Development Program."

In conducting the survey, the Committee sought to determine whether the Section 8(a) program is meeting the statutory goal of business development for minority firms. Whether firms graduating from the program were surviving in the competitive marketplace after getting 8(a) help was a further issue.

Unfortunately, the Administration could not provide these answers. SBA had little data or objective evidence as to what had happened to graduated firms.

The survey instrument was mailed to 461 firms in August 1986. These firms had graduated from the program in a four-year time period from October 1982 through February 1986. One hundred seventy-seven owners (38 percent of those contacted) responded.[1]

The chart below shows the distribution of responses from the ten SBA regions, total "Return to Sender" letters and total "No Response".

SBA region	Total received A	Total sent B	Total response rate (percent)	Total return to sender	Total no response
I Boston	19	40	48	10	11
II New York	16	41	39	10	15
III Philadelphia	35	111	32	40	36
IV Atlanta	23	55	42	8	24
V Chicago	5	30	17	5	20
VI Dallas	25	51	49	11	15
VII Kansas City	5	14	36	4	5
VIII Denver	11	22	50	3	8
IX San Francisco	24	58	41	11	23
X Seattle	14	39	36	13	12
Total	177	461	38	115	169

The survey gathered information on many issues, including ownership, ethnic origin, number of years in the 8(a) program; profile of firm (prior to and since graduation) in terms of products or services, number of employees, sales and assets since graduation; experience of the contractor while in the program and reaction to the responsiveness of the program's various components, including contract awards, management and technical assistance and financial assistance; experience of the contractor since graduation including government contracts received as well as private sector contracts and support received from SBA and MBDA since graduation; current operating condition of the firm, future growth, most severe problems and the impact of graduation on the firm's well-being; and additional comments and recommendations on any aspect of the SBA 8(a) program.

The survey found that the 8(a) program was plagued by weaknesses and inconsistencies which had persisted over the years, in spite of legislative interventions. After careful analysis and scruti-

[1] All of the survey population (461 firms) that could be located were canvassed by Committee staff by telephone to determine an overall out-of-business rate of graduates, one of the survey's major findings. Dun and Bradstreet aided the Committee by providing information on firms that could not be located using available information.

ny of the final survey results, the Chairman and Ranking Member expressed concern that if the 8(a) program were to survive as the major source of business development and government contracting for the nation's minority business community, another legislative overhaul was critical. A number of survey findings and other responses served as the main bases for the Committee in restructuring the 8(a) program through S. 1993. A discussion of these findings follows:

1. The 8(a) program is viewed mainly as a contracts program, not a business development vehicle

A large majority of respondents said that the 8(a) program had been most helpful in providing government contracts, but least helpful in providing management, technical, or financial assistance in developing firms. A major objective of the survey was to gather information on the effectiveness of the 8(a) program as a business development vehicle. Responses showed that the 8(a) program had fallen short in its delivery of these services to participating firms despite availability of contract support. Seveny-five percent of firms found government contracts "very helpful," as compared to 24 percent who rated management assistance or 16 percent who rated training as very helpful.

Since enactment of Public Law 95–507, the 8(a) program has basically remained a contracts program with management and technical support continuing to be inadequate. The authority granted to the Office of Associate Administrator for Minority Small Business and Capital Ownership Development (AA/MSB/COD) under Public Law 95–507, to provide management and technical assistance to 8(a) firms under Section 7(j)(10) of the Act, has not been effectively utilized by SBA.

Contractors also commented on the need for "structured seminars or strategic planning, marketing, sales, quality control, cost benefit analysis, financial analysis, and resource allocation * * * in lieu of the management and technical assistance programs now given." Another contractor stated: "* * * Business development [must be] a mandatory requirement for 8(a) contractors [including] all aspects of business, money management, and marketing * * *"

2. The program lacks a transitional structure

Many respondents said they were "dropped" from the program at the conclusion of their fixed program participation term with no transitional plan in place for leaving the program and entering the competitive marketplace. Although a transitional structure and phase-out program were outlined by the Secretary of Commerce and the Administrator of SBA in 1983 oversight hearings before the Committee, 72 percent of the firms said they had received no assistance from Minority Business Development Agency and less than 10 firms described MBDA assistance as very helpful. This finding supports the Committee's inclusion in Section 301 of the bill which calls for transitional managment assistance and a transitional business plan. MBDA was strongly criticized by respondents for lack of commitment and follow-through, as was SBA for not having contacted firms at all after graduation.

3. The out-of-business rate of graduates ranged from 21 to 30 percent

The Committee attempted to collect information on all 461 firms in the total survey population to determine, insofar as possible, the out-of-business rate for all graduates. Repeated mailings were made to firms that either did not respond or for whom the postal service reported mail could not be delivered. The Committee was able to estimate, with assistance from Dun and Bradstreet, the following:

97 of the 461 firms (or about 21%) were definitely not operating;

another 9 percent (42 firms) were also likely out of business, bringing the total to 30 percent.

A number of the firms canvassed by telephone, as well as those who responded in writing, indicated that they left the program almost or entirely dependent on 8(a) contracts. Some firms gave this as the reason they had gone out of business.

4. The impact of graduation on firms produced mixed results

Fifty-eight percent of the respondents said graduation had a devastating effect on their business and 51 percent said their firm failed to grow after graduation.

Conversely, however, 82 percent of the respondents felt their firm was not likely to go out of business because of graduation, and 61 percent said they were becoming competitive in the private sector. In addition, 57 percent said their firm continued to receive government and commercial contracts.

Obviously, graduates could no longer receive sole-source contracts. Often the firm was not prepared to replace its 8(a) work with contracts from other sources. A janitorial and maintenance firm from the Midwest commented that graduation had been devastating:

> * * * We were graduated without consideration of the fact that approximately 44 percent of our annual sales volume was 8(a) sales, and that an immediate termination [graduation] could be the undoing of the prior years of government assistance. We even had government agencies that wanted to write contracts with options in them beyond our graduation date but SBA wouldn't agree to it. Since that time, our profit and loss statement is in the RED (the first time in ten years).

5. Most firms said they needed to stay longer in the program

Firms were asked if they felt they had enough time in the 8(a) program; 64 percent said "No" and 36 percent responded "Yes". When asked what, in their opinion, was the optimum number of years for a firm to participate, the average response was 10 years. However, of the total number of respondents to the question, 51 percent of the firms did not suggest a number of years. Many commented that graduation should not be determined by number of

years, but on the basis of a firm's development.[1] Many owners did not give an optimum number of years.

6. Contract sources after graduation included very little subcontracting to major primes

More than 50 percent of the respondents indicated they had received commercial contracts through the competitive bidding process after graduation. Ninety-seven firms said they had received Federal contracts after graduation, most of which were awarded by agencies and departments with which they had worked before graduation. Other significant markets for graduates are state and local governments.

In both prime Federal contracts and in the state and local government markets, industry distribution of firms receiving Federal or state and local contracts since graduation showed a concentration in construction and services.

When asked if owners had received subcontracts from major Federal prime contracts, 84 percent of the respondents said *no.*

The subcontracting program established in Section 211 of Public Law 95-507 requires major prime contractors to submit subcontracting plans delineating goals for subcontracting with small and small disadvantaged businesses. Survey respondents repeatedly echoed concerns that this market had not materialized. One contractor stated: "We believe our Government has not done one decent thing to implement Public Law 95-507."

In Fiscal Year 1985, the Small Business Administration reported that $6 billion in total procurement went to minority business. Approximately $3 billion of the awards were through the 8(a) program; the other $3 billion were through open competition, small business set-asides, or subcontracting. This compares to $33 billion dollars that went to all small businesses in prime contract awards and $24 billion awarded through subcontracts. The Committee believes that more attention must be given to increasing subcontracting opportunities for minority firms, particularly 8(a) graduates.

7. Summary of survey findings and recommendations

A section of the survey was devoted to soliciting additional written comments on the 8(a) program's strengths and weaknesses and recommended changes the graduates felt were needed for its improvement. Many respondents expressed appreciation for having had the opportunity to participate in the 8(a) program and felt it had helped their firms to grow. Others stated that Public Law 95-507's mandate to improve the program was commendable but had not been realized. Even those who sharply criticized certain aspects of the program expressed the sentiment that it should be maintained but strengthened.

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[1] Public Law 96-481, as originally introduced by Senator Robert Morgan of North Carolina in 1980, called for a statutorily established participation period of five years. During Committee markup of this bill, an amendment was offered that deleted the five-year provision. Instead of mandating a specific time, Congress delegated responsibility to SBA to establish the appropriate participation term. The law also specified that the term not begin until a firm received its first contract. Although SBA established the fixed program participation term of up to 5 years and no more than 7 (if an extension was requested and granted), the issue of an appropriate length of time has remained controversial.

The Committee concludes that the SBA Section 8(a) program remains an important vehicle for ensuring the inclusion of minority firms in our nation's federal procurement system, and that some progress had been made in administering the program since enactment of Public Law 96–481. However, the lack of progress towards making 8(a) program participation a true business development experience for participants, as intended by law, as well as other major deficiencies in the overall operation of the program have overshadowed its purpose and effectiveness.

The areas of great concern which the Committee sought to address in S. 1993 include the following:

(a) the Agency's apparent inability to deliver timely management and technical assistance to program participants despite the fact that the Capital Ownership Development division of SBA was established for that primary purpose;

(b) the broad perception by many respondents that many SBA personnel are unable to provide the technical assistance or guidance needed in most procurement matters;

(c) certain administrative weaknesses undermine operation of the program including the agency's difficulty in keeping accurate or updated files on program graduates and participants;

(d) inconsistent administration of the program from region to region;

(e) the perception of many graduates that politics drives the program;

(f) the possibility that "front" companies are still a significant problem;

(g) the imbalance in contract opportunities among the regions for many portfolio firms.

While the program has enjoyed a degree of success, demonstrated by the number of firms still operating since leaving the program, the fact remains that many of these owners did not attribute their success to the 8(a) program or sharply criticized it as a business development vehicle.

On the other hand, there have existed a number of circumstances over which SBA may have had little or no control which have undermined the success of the program. These include SBA's lack of authority to select procurement opportunities from major Federal agencies in order to capture a steady stream of contracts for portfolio firms, which would add predictability to structuring and administering the program; and staff reductions sustained by the Agency of approximately 35 percent since 1979, with a concurrent increase in the portfolio of nearly 40 percent since that time. This dramatic reduction in manpower would likely impede the progress of any operation, even if other managerial or programmatic problems did not exist.

C. HISTORY OF ADMINISTRATIVE PROBLEMS/NAPA REPORT

As the Wedtech scandal has unfolded in courtrooms from New York to Washington, and as Congressional interest in reform has heightened, SBA has taken administrative steps to address problems as well. The National Academy of Public Administration (NAPA) was commissioned by the Small Business Administration

(SBA) to conduct a "Management Review of the Organization and Operation of the Minority Small Business and Capital Ownership Program" on June 24, 1987. Newly appointed SBA Administrator James Abdnor requested this study as a follow-up to the Senate survey of 8(a) graduates. Both the Administrator and officials of NAPA testified on the results of this study.

The concentration of the study was on internal management and operational problems, several of which the survey had highlighted. The NAPA study team collected most of its data from individual interviews. The team also reviewed SBA documents, reports and procedures.

The major findings corroborated a number of the results from the Committee survey and underscored the need to change basic administrative and operational procedures that drive the program. The report highlighted fifteen of the studies and audits that had been conducted over the past 20 years on the 8(a) program by the Office of the Inspector General (OIG), the Government Accounting Office (GAO) and others. NAPA was "struck" by SBA's "long history of slow progress" during which many reforms and improvements had been identified, but little action had been taken to make necessary changes. This history conveyed a troubled picture of the many important administrative weaknesses left still unresolved by SBA. For example, the Interagency Report on the 8(a) program for SBA Administrator Weaver, January 31, 1978, was cited by NAPA. That report called for greater emphasis on business development, increases in personnel, a comprehensive staff training program that included procurement, financial analysis and management and multi-year planning. Ten years later and after as many similar studies plus two legislative enactments, it is again necessary to bring legislative reform to nearly the same issues.

Although the Commmittee had completed its work on the survey and begun drafting S. 1993 before the NAPA study was released, the report reinforced certain sections of the Committee bill. The report's key points are summarized below.

Institute a comprehensive Portfolio Management Program to ensure a healthy portfolio of firms that will be given effective assistance.—NAPA found that wide disparities exist in the workload of the Business Opportunity Specialist (BOS) and other staff in the various SBA regional and district offices. A BOS in Birmingham, Alabama, for example, had a portfolio of 48 firms, while the BOS in Lubbock, Texas, was assigned just 3 firms.

This disparity in staffing undoubtedly has some impact on the grossly disparate number of contracts awarded to 8(a) firms in various regions and states. For example, the Committee notes that in 1987, Maryland's 350 contracts totalling $203.5 million and Virginia's 567 contracts for $276.6 million contrast dramatically with Arkansas's 76 contracts for $20.4 million and Oklahoma's 41 for $15.1 million.[1] NAPA made several specific recommendations to remedy the portfolio management problems which the Committee wholeheartedly endorses.

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[1] Appendix B to this report shows the number and dollar value of 8(a) contracts for each state and territory during 1987.

Launch a creative program to enhance workforce effectiveness, thus improving the ability of the SBA work force to render the wide range of management and technical assistance services required.— The study concluded that MSB field personnel have varied and complex duties which require a wide range of management and technical skills, but that staff skills must be assessed and upgraded to ensure effective delivery of such services. The study reported that in one of the largest districts, most of the BOS's had very little formal education beyond high school. Many had risen through the ranks from clerks and secretaries and had not received adequate training in procurement, management or other technical areas.

The Committee has addressed this issue in Section 501(b) of S. 1993, which mandates extensive training of staff. The Committee further notes that the FY 1989 appropriations measure for SBA, as reported by the Subcommittee on Commerce, Justice, State, the Judiciary, and Related Agencies, includes an increase of $4 million in funding specifically for the MSB/COD program to train all personnel and hire additional staff.

Ensure accountability for MSB/COD performance at each level of management: Central Office, Regional Office and District Office.-- NAPA recognized that the MSB program suffered a serious "top-to-bottom" leadership problem in both policy and operations. From central administration to more than 60 field offices, lines of communication were inadequate, coordination varied widely, and there was little planning for better portfolio management or upgrading of business skills. The lack of strong national leadership and coordination continues to adversely affect the program. The report supported the Senate survey findings on the SBA's need to keep accurate and comprehensive data.

D. WEDTECH—SUBCOMMITTEE ON OVERSIGHT OF GOVERNMENT MANAGEMENT INVESTIGATION

In November 1986, the Subcommittee on Oversight of Government Management of the Senate Governmental Affairs Committee, chaired by Senator Carl Levin, began a review of federal procurement decisions related to the Wedtech Corporation. In the course of its year-long investigation, the Subcommittee conducted more than 150 interviews and reviewed thousands of pages of documents, including trial transcripts. Senators Bumpers and Weicker, at the invitation of the Subcommittee, participated in the series of investigative hearings, which focused on the issue of Wedtech's eligibility for the 8(a) program and on two major contracts awarded to Wedtech in 1982 and 1984.

In April 1988, the Oversight Subcommittee concluded its investigation by issuing a report tracing the involvement of four federal agencies—the White House, the Army, the Navy, and the Small Business Administration—in determining Wedtech's eligibility and awarding these contracts. The Subcommittee found "an unfortunate picture of favoritism, political influence, mismanagement, and improper and irregular decision-making" by these federal agencies, as well as unethical conduct by several federal employees.

The Subcommittee's report, Wedtech: A Review of Federal Procurement Decisions, S. Rpt. 100-108, was released on May 4, 1988.

It contains a wealth of useful information and ten recommendations for the 8(a) program. In particular, the Subcommittee found that the Wedtech case dramatically demonstrates the need for reform in two key areas of the program—business development and eligibility.

First, with regard to business development, the Subcommittee found that the SBA selected Wedtech to receive two huge 8(a) contracts without any documentation of the rationale for the selection and went out of business without ever developing a business base independent of the 8(a) program. The Subcommittee concluded that this kind of problem could be avoided in the future by introducing competition into the program and by requiring that participating companies achieve a balance of 8(a) and other business.

Second, with regard to 8(a) eligibility, the Subcommittee found that the SBA permitted Wedtech to remain in the program in 1984 and to receive the huge Navy pontoon contract despite the fact that the company had gone public, thereby giving up minority ownership and making its supposedly "disadvantaged" owners millionaires. The Subcommittee concluded that the important public purpose of the 8(a) program is severely undermined when individuals who are not socially and economically disadvantaged are permitted to participate.

The Subcommittee's recommendations were as follows:

(1) Section 8(a) of the Small Business Act should be amended to clarify that the required 51% ownership of a company or its stock by a socially and economically disadvantaged individual must be unconditional.

(2) The SBA should be required to establish a threshold value of personal net worth that presumptively indicates a lack of economic disadvantage, but that provides a limited exception for personal assets invested in the 8(a) firm itself.

(3) Section 8(a) should be amended to clarify that 8(a) contracts may be awarded only to firms that are economically disadvantaged at the time of the award.

(4) Section 8(a) should be amended to strictly limit Fixed Program Participation Term extensions.

(5) Section 8(a) should be amended to require the SBA to schedule a hearing on any termination recommendation within three months of the initial notification to the company.

(6) Section 8(a) should be amended to require competition among 8(a) contractors for contracts over an established dollar value (including options for additional purchases).

(7) Section 8(a) should be amended to permit the solesource award of a contract of any dollar value only with careful documentation of the qualifications of the selected contractor, the reasons for the selection, and the basis for the rejection of other contractors (where other contractors were considered).

(8) Participants in the 8(a) program should be required (after a reasonable amount of time in the program) to obtain a minimum percentage of their business from non-8(a) sources. Companies that fail to achieve the requisite percentage of non-8(a) business should not be awarded additional 8(a) contracts.

(9) Limits should be placed on the size of any one 8(a) contract in relationship to past contracts and the total volume of a company's business.

(10) Section 8(a) should be amended to limit the amount of Business Development Expense (BDE) grant money that may be awarded to any one company.

These recommendations have helped shape major provisions of S. 1993, and the Committee staff has maintained close contact with Senator Levin and the Subcommittee staff throughout the drafting process. Many of the principals in the Wedtech case are still under investigation or awaiting trial. This much, however, is clear: The availability of sole-source federal contracts, with relatively little accountability, served to attract political forces of the highest order to this business development program. This political influence-peddling, by those inside and outside the government, has tarnished the reputation of the SBA and undermined public support for minority business programs in ways that can hardly be overstated.

E. INTRODUCTION OF S. 1993, THE MINORITY DEVELOPMENT PROGRAM REFORM ACT OF 1988

Senate Bill 1993 was introduced on December 21, 1987, by Senator Dale Bumpers, Chairman of the Committee on Small Business, and originally cosponsored by Senators Lowell Weicker and John Kerry who serve as Ranking Minority Member of the Committee and Chairman of the Subcommittee on Urban and Minority-Owned Business Development, respectively. The bill had a total of 9 cosponsors at the filing of this report.

In introducing the bill, Chairman Bumpers noted that 850,000 minority-owned small businesses make up an important part of our Nation's economic framework. These firms have played an especially important role in revitalizing depressed areas that would otherwise be dependent upon millions of Federal dollars for economic recovery. "The 8(a) program, established to assist the development of minority and disadvantaged businesses by providing Federal contracts and business development resources to these firms, has been crippled by fraud and mismanagement," the Chairman stated, "yet the program retains great promise as a tool to strengthen disadvantaged businesses and provide greater economic opportunity if corrective measures are taken to restore integrity to the program."

One of the corrective measures referred to by Chairman Bumpers was the injection of competition into the 8(a) program for large dollar contracts. As introduced, S. 1993 required procuring agencies to offer for competition any 8(a) contracts that exceed $2,000,000. Contract award would be based on technical and price competition with procuring agencies applying the Rule of Two. However, if two or more responsible offerors are not available, the contract could be sole-sourced. This provision was included to render the program less subject to political influence, and to avoid future Wedtechs in which large dollar sole-source opportunities have attracted inordinate and unhealthy political manipulation. The $2,000,000 threshold is increased to $5,000,000 in the Committee Amendment.

Another key reform included in S. 1993 is the mandated business mix requirement which provides that 8(a) firms develop business

outside of the program by the end of the fifth year of participation in order to continue receiving sole-source contracts in the out-years. In the reported version of the bill, a firm's new sales must be at least 30 percent non-sole-sourced at the end of its fifth year in the program, and 50 percent non-sole-sourced by the end of the sixth year. However, the Committee expects SBA to closely monitor the progress of all firms through the program and to strongly encourage a higher percentage of non-8(a) business than mandated by the time the firm graduates.

The business mix provision is the Committee's response to program participants' over-dependence on sole-sourced contracts through most of their tenure in the program, which has proven to be a major factor affecting firms' survival or failure after graduation. Senator Weicker said of the business mix provision:

> The program is not preparing minority firms to effectively operate in an open and competitive marketplace. * * * The over-dependence on 8(a) contracts by participating firms was determined to have been one of the major problems that had led many owners to failure after graduation. * * * Our recent survey showed nearly a third of the firms that graduated from 1982–86 were no longer in business. This provision, if administered properly, should deter the trend of over-dependence on sole-sourced contracts, and in the long run, much better serve the goals of the program.

Despite previous Congressional efforts to change the thrust of the 8(a) program, it continues to be viewed primarily as a source for contracts, rather than as a business development program. The Committee believes this is due, in part, to the fact that the 7(j) and 8(a) business development components have not been adequately administered by SBA. This view was confirmed by Committee survey respondents, who said overwhelmingly that management and technical and financial assistance were the program's weakest components, and by the NAPA report. Title III of S. 1993 is designed to change the direction and image of the program. The bill requires that a business plan be developed by each firm immediately after certification. The plan should include estimates of the amount of 8(a) and non-8(a) work that the firm needs to obtain for long-term viability. Business Opportunity Specialists (BOS's) are to meet at least annually, but as often as necessary, to review the plan, assess the firms' ability to meet the contract mix requirements, and provide the management and technical assistance needed. The bill encourages business development by directing SBA to contract with private sector experts to provide help for firms' top managers in preparing competitive initiatives and planning for graduation.

Because qualified Business Opportunity Specialists (BOS's) are essential to fulfilling the purposes of the program, S. 1993 directs SBA to provide a comprehensive training program for all BOS's to sufficiently prepare them to provide these very complex services. Based on the NAPA report's indepth discussion of the role of the BOS and its recommendations, the bill places a limit on the number of firms to be serviced by the BOS. This should remedy the

unbalanced distribution of firms assigned to some BOS's, as discussed earlier in this report.

S. 1993 alters the present procedures for setting a firm's length of time in the program and granting extensions. All companies, once certified, will stay in the program for eight years from the time of the first contract award. No extensions will be considered. Current program participants may continue in the program for the greater of 8 years, minus the number of years since award of the first 8(a) contract, or the unexpired portion of the current FPPT. Firms will be terminated from the program if deemed no longer small or minority-owned, and SBA is required to redetermine an owner's eligiblity if the firm makes a public offering of stock. The Committee believes this provision is essential to establish consistency and remove the "political" emphasis most 8(a) firms felt surrounded their being able to get an extension from SBA.

F. COMMITTEE HEARINGS ON S. 1993

The Committee held three legislative hearings on the 8(a) program and S. 1993 in February of 1988, as well as two oversight hearings during 1987, including a field hearing in Roxbury, Massachusetts, in September. Chaired at various times by Senators Bumpers, Weicker and Kerry, the original cosponsors of S. 1993, the hearings provided a wealth of information from a wide range of interested parties, including the Small Business Administration, other government agencies, Members of Congress, minority trade associations and 8(a) contractors and graduates. Although witnesses differed in their assessment or approach to some provisions of S. 1993, there was complete agreement that the 8(a) program was a necessary and potentially effective business development vehicle for minority entrepreneurs which should be strengthened.

On February 2, 1988, the Committee received testimony from Administrator James Abdnor; former Representative Parren Mitchell, Chairman of the Minority Business Enterprise Legal Defense and Education Fund; Mr. Robert Bedell, Administrator for Federal Procurement Policy in the Office of Management and Budget (OFPP); and Mr. Ray Kline, President of the National Academy of Public Administration (NAPA). Former Chairman of the House Small Business Committee Parren Mitchell praised the Committee panel for "* * * providing legislation which, with a few changes, should work well for minority entrepreneurs." Citing frustrations experienced over 17 years with the House Committee, he expressed strong sentiment that reform should begin with the Small Business Administration. He expressed concern about the mandated business mix provisions of S. 1993 as well as the contract performance or "sale of business" provisions. Mr. Mitchell also argued for the longer program term contained in H.R. 1807. Administrator Abdnor, on the other hand, believes the current seven-year term is sufficient and also asked the Committee to give clear guidance which would remove the Agency's discretion on many issues.

At the second hearing on February 18, 1988, Senator Carl Levin, Chairman of the Governmental Affairs Subcommittee on Oversight Management, reported the findings of his Subcommittee's investigation of the Wedtech case and stressed the need for reform in two

key areas of the program—business development and eligibility. He noted, "The important public purpose of the 8(a) program is severely undermined when individuals who are not socially and economically disadvantaged are permitted to participate. Such participation by non-disadvantaged individuals reduces the amount of benefits available to those who are disadvantaged, diverts the energy and efforts of the SBA, and undermines support for the program". Senator Levin said he would likely introduce an amendment that would establish criteria for "economic disadvantage".

Congressman John LaFalce, Chairman of the House Small Business Committee and sponsor of H.R. 1807, the House Minority Business Development Bill, also testified reiterating his position that non-competitive contracts have been the source of many problems in the program. Congressman LaFalce expressed his support for the inclusion of competitive thresholds of $2 million in the original Senate bill. He called for improving the skills of SBA personnel who work in the 8(a) program and emphasized the need to collect comprehensive data on the program.

Mr. John Luke, Associate director for the Resource, Community and Economic Development Division of the General Accounting Office, another witness at the Febraury 18 hearing, shared with the Committee the preliminary findings of a recently completed review of the 8(a) program, which was undertaken for Representative Jack Brooks, Chairman of the House Government Operations Committee. Many of the SBA management problems of the 8(a) program that the GAO identified in 1981 still exist according to Mr. Luke's testimony. For example in 1981, the GAO reported that a large number of 8(a) firms graduated from the program overly dependent upon sole-source contracts. In 1987, the Committee's survey of 8(a) graduates revealed the same thing.

The Committee concluded hearings on February 25 by receiving testimony from individual 8(a) program participants and representatives of minority business trade associations. Ms. Esmeralda Santiago, President of CANTOMEDIA Corporation, in Hingham, Massachusetts, and Dr. Tom Velez, President of Computer Technology Associates, Inc., in Englewood, Colorado, stressed the need for 8(a) firms to become self-sufficient and competitive. Ms. Santiago told the Committee, "Businesses in the 8(a) program should compete with each other for contracts. In the process of competing with other 8(a) companies, I've learned a great deal about proposal preparation, budgeting, and negotiating; skills that have become crucial as CANTOMEDIA prepares for graduation from the program." Dr. Velez, who is one of the program's most successful graduates, stated, "We can not continue to produce sole-source dependent companies which lack experience and training in the competitive procurement process. Allowing companies to operate in a sole-source environment for any length of time is counterproductive to the goal of competitive business development.

The National Association of Minority Contractors (NAMC) and the National Federation of 8(a) Companies testified at this hearing and shared their concerns and reservations regarding the legislation. Julio Jo, President of J&J Engineering, Inc., in Miami, Florida, speaking on behalf of NAMC, supported changes regarding 8(a) eligibility and provisions of the bill which would enhance manage-

ment assistance to program participants, but urged the Committee to revise the mandated business mix formula. Dr. Elizabeth Pan, President of the National Federation of 8(a) companies also opposed the business mix and favored a fixed program participation term of 9 years.

Additionally, the Chairman and other Committee members as well as the staff have devoted many hours to meeting with 8(a) firms individually and in small groups to hear concerns about S. 1993 as introduced. Many of the changes in the Committee print, such as increasing the competitive threshold from $2 million to $5 million, liberalizing the business mix provision and easing the contract performance provisions, are directly reflective of the concerns expressed at the hearing and in subsequent discussions.

G. H.R. 1807, PROCEEDINGS IN THE HOUSE

H.R. 1807, the Capital Ownership Development Reform Act of 1987, was introduced by Representative Mavroules in the House on March 25, 1987. It passed the House and was referred to this Committee in December 1987. The bill was considered in tandem with S. 1993 in hearings by this Committee on February 2, 18, and 25, 1988. H.R. 1807 has 36 cosponsors, including 22 Members of the House Committee on Small Business.

Following its introduction in the House and referral to the Committee on Small Business, H.R. 1807 was referred to the Subcommittee on Procurement, Innovation, and Minority Enterprise Development. The Subcommittee held six hearings in May and June of 1987 and favorably reported an amendment in the nature of a substitute presented by Subcommittee Chairman Mavroules and the Ranking Minority Member of the Subcommittee, Representative Conte. the measure was reported by a unanimous vote of 14–0.

The full Committee conducted a hearing on September 29, 1987, to consider the Administration's position on the amended Subcommittee version and proceeded to mark up H.R. 1807 from an October 30, 1987, Committee Print of H.R. 1807. The Committee print contained many changes from the Subcommittee's reported version, and was compiled by Full Committee Chairman John J. LaFalce, Ranking Minority Member Joseph M. McDade, as well as Representatives Mavroules and Conte. The measure was ordered to be reported by a vote of 40–1. While the bill as introduced provided for a 14-year program term, the final version of H.R. 1807 allows a 9-year program term and also provides for competition among 8(a) firms for larger 8(a) contracts.

H.R. 1807 was favorably reported by the House Committee on November 25, 1987, and placed on the Union Calendar. Under a suspension of the rules, the bill passed the House by a voice vote on December 1, 1987, and was received in the Senate and referred to this Committee on December 4, 1987.

III. Committee Consideration

On May 17, 1988, the Committee met in executive session to consider S. 1993 and H.R. 1807. The Committee had before it a Committee print containing an amendment in the nature of a substitute developed by the Chairman and Ranking Member. With a

quorum present the Committee ordered H.R. 1807 reported without recommendation and voted unanimously to favorably report S. 1993 with an amendment in the nature of a substitute. During the Committee's consideration of S. 1993, several amendments were offered to the Committee amendment.

Levin Amendment

By voice vote, the Committee accepted an amendment proposed by Senator Levin to modify and clarify 8(a) eligibility requirements. I particular, the amendment requires that: (1) ownership of an 8(a) company by a socially and economically disadvantaged individual must be unconditional; (2) the Administration must establish clear criteria for determining economic disadvantage; (3) 8(a) firms must certify their eligibility for the program on an annual basis; and (4) firms that are determined to have overcome their economic disadvantage must be graduated from the 8(a) program.

Section 8(a) confers substantial benefits upon participants in the form of sole-source contracts, business development grants, low interest loans, and free management consulting services. The important purpose of the program is severely undermined, however, when individuals who are not disadvantaged are permitted to participate. Participation by non-disadvantaged individuals, as clearly was the case with Wedtech, reduces the benefits available to those who are disadvantaged, diverts the energy and efforts to the SBA, and undermines public support for the program. This amendment is intended to prevent program participation by those who are not its intended beneficiaries.

(1) With regard to ownership, the amendment to Section 8(a)(4)(A) of the Small Business Act clarifies that ownership for 8(a) purposes must be free and clear and without any conditions or encumbrances. Under this provision, ownership that is subject to conditions precedent, conditions subsequent, executory agreements or other limtiation would not satisfy 8(a) eligibility requirements.

This rule will preclude the SBA from accepting as a basis for disadvantaged ownership a sham stock transaction like the one entered by the owners of the Wedtech Corporation and accepted by SBA officials at the district, regional and national levels in 1983 and 1984. In that so-called "stock purchase agreement", no money or stock changed hands, no payments were due for two years, and no price was even set for the sale.

There may be cases in which the disadvantaged owner of an 8(a) firm must pledge his or her stock in the company to obtain financing for operation of the firm. The Committee does not intend that such a pledge of stock should disqualify the individual or the firm from continued participation in the program, so long as the loan is obtained through an arms-length transaction with a legitimate financing institution.[1]

(2) With regard to economic disadvantage, the amendment to Section 8(a)(6) of the Act requires the Administrator to establish a threshold value of net personal worth, in effect, a ceiling. A personal net worth in excess of the ceiling would presumptively indicate a

[1] See discussion of Section 203, infra.

lack of economic disadvantage. This provision would preclude the SBA from finding multi-millionaries with proven access to large sums of capital and credit to be "economically disadvantaged." The Committee believes that the Administration should strongly consider excluding an individual's primary residence in determining economic disadvantage. The Committee expects that regulations on this point will be carefully crafted to avoid the possibility of abuse.

This amendment merely establishes a *presumption* that an individual with a net worth in excess of the threshold amount set by the Administration is no longer economically disadvantaged. In some case, an individual's net worth might exceed the threshold by a modest amount for a period of short duration. In such cases, the presumption may be overcome and the individual may be determined to remain economically disadvantaged, despite exceeding the threshold amount. This determination would be made by the Associate Administrator for Minority Small Business and Capital Ownership Development in accordance with the procedures established in Title II of the bill.

The amendment specifically excludes the value of the owner's investment in the 8(a) firm from calculations of an individual's net worth, so as not to disqualify 8(a) firms from further participation in the program simply because they become successful. This exclusion applies regardless of the form of ownership of the 8(a) firm—whether corporate, partnership, sole proprietor or a Subchapter S corporation. In addition, the Committee intends that the assets of any joint venture undertaken by an 8(a) firm should be treated as assets of the firm and excluded from calculations of personal net worth. Under this amendment, any otherwise qualified 8(a) firm should be able to remain in the program, so long as its owners continue to reinvest in the firm any assets in excess of the threshold established by the Administration.

The amendment, as modified by Senator Levin, authorizes the Administrator to establish "a threshold or thresholds". This modification gives the Administration flexibility to accommodate reasonable growth, caused by inflation or other factors, in the personal net worth of 8(a) participants through the course of their participation in the program. For example, the Administration may elect to establish two thresholds—one to be applied as a criterion for program admission and one to be applied to firms that have already participated in the program for a specified number of years.

This modification does not authorize the Administration to set different thresholds for different firms or different categories of firms on any basis other than the number of years that the firms have participated in the program. The Administration is directed to formulate its rule under this provision in accordance with notice and comment procedures under the Administrative Procedures Act.

(3) With regard to certifications, the amendment to Section 8(a)(8) of the Small Business Act requires each 8(a) contractor to certify annually that it is at least 51% owned by socially and economically disadvantaged individuals, as defined in the statute. These requirements are stated in Sections 8(a)(4–6) of the Act but have not been enforced by the SBA, which has taken the position that an 8(a) firm must demonstrate economic disadvantage only at the time it enters the program. The amendment requires that 8(a)

firms be owned by individuals who are economically disadvantaged as of the time of certification.

An intentionally false certification under this provision would trigger the applicability of the criminal false claims and false statements provisions in 18 U.S.C. Secs. 287 and 1001, as well as their civil counterparts. The potential criminal and civil penalties under these provisions should encourage 8(a) firms to give appropriate weight to eligibility requirements. Of course, these provisions are applicable only to intentionally false claims and false statements.

(4) With regard to graduation, the amendment to Section 203 clarifies that individuals who are no longer economically disadvantaged are to be graduated from the program, rather than terminated. This provision recognizes that individuals who have overcome their economic disadvantage have taken significant steps toward building successful businesses and no longer need depend on program benefits for their well-being. Graduation of such companies will make way for other, more disadvantaged individuals and firms that have not yet achieved success. This provision is not self-operating, but would provide for graduation only after a specific determination by the Associate Administrator for MSB/COD that an individual is no longer economically disadvantaged, made pursuant to the procedures in Title II of the bill.

Mikulski amendments

Program term.—Senator Mikulski offered an amendment to extend from 8 to 10 years the term for program participation. After some discussion, Senator Mikulski withdrew the amendment and offered a substitute amendment which directs the Small Business Administration to appoint a task force, comprised of members of the public and private sector, to collect data and assess the developmental problems and cycles for future program participants to determine whether a differential term for 8(a) firms in various industries should be established. The substitute amendment establishing a task force was accepted.

SBA Task Force study.—The Committee understands that there are certain limitations in its adoption of a uniform fixed program participation term (FPPT) applied to all industries. The argument has been made that a firm designing and manufacturing electronic components for government defense systems, for instance, could require a significantly longer period to become commercially viable than certain nonprofessional service providers such as cleaning establishments, trucking companies or parts vendors. If the 8(a) program is to adequately nurture the individual development of a full portfolio of various business endeavors, rather than merely provide a limited opportunity for participation in the procurement system, participation terms should be directly related to specific industry development cycles.

However, a counter-argument has been made that such a system would confer greater benefits on those with substantially more education and income and who, at least arguably, need help least.

In reports on prior 8(a) legislation beginning in 1980, the Congress mandated that the SBA collect and correlate data upon which reasonable FPPT's could be constructed, taking into account the geographic locale, nature of the business, and availability of

private sector capital. For reasons which are difficult to understand, the SBA has admitted that it still has not compiled and correlated the basic data base on which to make these fundamental programmatic judgments.

The Mikulski amendment would require the Administrator of the SBA to appoint a Task Force on Small Business Development to collect and correlate available industry data. The Task Force would be patterned after the SBA Task Force on Venture and Equity Capital for Small Business chaired by William J. Casey in 1977. This Task Force would draw prominent members from the private sector, from academia, and from the government. Investment bankers, accountants, economists, business professors, and successful entrepreneurs would work under the sponsorship and guidance of the SBA to assess the developmental cycles of particular industries represented within the 8(a) portfolio. The Task Force would work with the SBA to review existing data and supplement it with new data as required to construct a meaningful profile of the developmental needs of small 8(a) businesses based on industry groupings.

A report shall be filed with the Administrator of SBA no later than April 15, 1990, and shall be made available to the Congressional Small Business Committees immediately thereafter. The report shall examine the FPPT and make specific recommendations concerning the appropriateness of possible modifications to fit the development needs of particular industries.

Business mix.—Senator Mikulski offered another amendment to change from fixed "requirements" to "goals" the business mix provision, i.e., the provisions of the Committee amendment which limit the amount of sole-sourced 8(a) contracts that a firm may receive in years 5 through 8. While Senator Mikulski recognized the need for some "business mix" provision to assure that firms not develop total dependence on 8(a) sole-sourced contracts, she was concerned that the bill placed the burden on firms, rather than the Small Business Administration, to develop the necessary management and technical skills to successfully compete for business outside the program.

The Committee believes that the concept of "business mix" requirements is essential. The committee amendment provides that SBA may waive the percentages and make an award if it determines that the firm is likely to receive a competitive award to bring it into compliance, and that denial of the award would undermine the firm's ability to achieve its business objectives. This waiver provision may allow SBA to mitigate any potential harm to the firm. Thus, the Committee rejected this Mikulski amendment by a voice vote.

Kerry amendment

Senator John Kerry offered an amendment, which was accepted, that prohibits SBA from denying a company certification for the 8(a) program solely because the agency believes their is insufficient contract support in the program to sustain the firm.

Currently firms applying for 8(a) certification go through a two-step process. First, before accepting a complete application package, SBA conducts an evaluation of whether there are adequate

contracts to support another firm in the particular industry in the SBA portfolio. This stage is commonly referred to as the "1017" process, after the SBA form that the applicant submits. The 1017 is processed on a national and regional basis. If SBA determines that the applicant is in an industry for which there are already too many firms or for which there is not sufficient work to support the firms already in the portfolio, the SBA will defer the consideration of a complete application. The committee has frequently heard from firms which were denied certification because of a "lack of contract support."

The 1017 process as a means of determining whether there are Federal contracting opportunities is somewhat arbitrary and may not accurately reflect the Federal marketplace. By considering only past contracting opportunities offered for the program, the process fails to take into account new emerging areas of federal contracting. Frequently, firms have been told by procuring agencies that work would be available for them if they received 8(a) certification, only to be told by SBA that they cannot be certified due to a lack of contract support. Further, the process appears to be based on the faulty notion that SBA will provide firms with the necessary contract support once they are certified. Experience, however, has shown that the program works most effectively for those firms that market contract opportunities themselves. Under Section 401 of the bill the Committee recognizes the significance of self-marketing.

The bill provides that SBA shall decide applications for the program within 90 days of receiving a completed application. In order to meet this expedited certification process, it will be necessary for SBA to streamline and eliminate some aspects of the current process. The Committee suggests that SBA reconsider the "1017" process. Under the newly expedited process, firms should not be summarily dismissed by the arbitrary reasoning that there is not adequate contract support, and the Kerry amendment prohibits this. The amendment was adopted without objection.

Boren amendment

Senator David Boren offered an amendment to clarify the eligibility of Native American tribally owned businesses for the 8(a) program. Specifically, the amendment would allow Indian tribally owned business to have more than one firm certified for the program provided that (1) the firms are not in the same industry and (2) the manager of the tribally owned business does not operate any more than two certified firms. The Committee is aware of the successes of certain tribal businesses in promoting economic development in particularly depressed areas. The Boren amendment will make more such opportunities available by repealing the so-called "once in a lifetime" rule for 8(a) participation as it applies to tribally owned business. Further, management of a tribally owned firm by an individual Native American does not preclude that individual from later applying for certification as a socially and economically disadvantaged individual as owner of a particular privately owned business.

Further, SBA is directed to establish an Indian Desk or reference person in those districts and regions having significant Native American populations. This designated SBA employee should ac-

tively assist both tribal businesses and individual Indians in availing themselves of all SBA programs by providing outreach to Indian communities.

The Boren amendment was accepted without objection.

Dixon amendments

Senator Dixon offered an amendment to preserve existing competitions among 8(a) contractors that result in split or multiple awards.

The Department of the Navy and the Small Business Administration working jointly in order to assure multiple sources, steady production, reduction in contract pricing, and in response to the 1985 Department of Defense Authorization Act Conference report, developed a competitive contracting program within the 8(a) program.

Because the competition among 8(a) firms introduced by the Navy has been successful in achieving its intended objectives, no change in this form of competition is warranted. Agencies using a form of competition prior to this Act should be permitted to continue that competition so long as the products and services produced thereunder continue to be needed. The Dixon amendment was accepted.

Senator Dixon also offered an amendment to strike language in the bill requiring Federal agencies, on each contract requiring a subcontracting plan under Section 8(d) of the Small Business Act, to include a contractual provision requiring large prime contractors to pay liquidated damages in the event the prime does not make good faith efforts to meet the goals of the plan. After concern was expressed by Senator Weicker, Senator Dixon withdrew the amendment and offered an alternative providing that determination of the contractor's liability under the provision would be subject to a hearing under the disputes resolution provision of the Federal Acquisition Regulation. At the Chairman's request, Senator Dixon withdrew this amendment and agreed to pursue the issue by amendment when the bill is considered on the Senate floor, while staff was instructed to attempt to resolve the issue by compromise.

Finally, Senator Dixon offered an amendment to establish the Small Business Competitiveness Demonstration Program, which is the product of two days of hearings which Senator Dixon has chaired on S. 1559, a bill he had introduced with Senators Bumpers and Weicker on July 28, 1987. This bill and subsequent drafts which were circulated for comment to both industry and federal agencies, represent the Committee's response to a twofold and nettlesome problem in federal procurement from small business in certain industries.

The complaint has been long-standing that a disproportionately large number of contracts are reserved for small business competition (the so-called small business set-asides) in certain industries, particularly construction and architecture and engineering services (A&E services). This complaint comes from both large firms in these industries who feel shut out from many opportunities and

from small firms in other, unrelated industries where small business participation has been historically low.[1]

Many of the large firms in construction and A&E services have inferred that the number of set-aside contracts in their areas flows directly from SBA size standards which they argue are too large. The interplay between the size standard and the Rule of Two, in areas where relatively small firms clearly dominate the market for most areas of the country, results in inflated numbers of set-aside contracts going to firms which are not, in fact, "small" in the competitive sense.

The Committee agrees that some industries have shown high percentages of contracts set aside for small business, while others have shown consistently low participation by small firms. The Committee does not, however, agree that radical adjustments to size standards are warranted or that they will be effective in addressing either aspect of this problem.

Proponents of revisions in size standards have made little progress in convincing either the House or Senate Small Business Committees of the merits of their views. Neither Committee has reported legislation in either the 99th or 100th Congresses on the issue of size standards. This viewpoint was, however, accepted by the House Armed Services Committee, which decided to implement reforms in small business programs in the course of FY 1987 Department of Defense Authorization measure. The Armed Services Committee determined that it would rectify these perceived problems by forcing adjustments to SBA's size standards, without limitation as to amount, to a point at which no more than an acceptable number of contracts, in their view, would be reserved for small business competition. While the Senate Armed Services Committee did not entirely agree with their House counterparts on this issue, the House prevailed in Conference in amending the Small Business Act to order the sought-after reduction in size standards. Section 921 of Public Law 99-661 mandates that size standards for construction and architectural and engineering services and certain other industries be reduced to meet the level established by the House Committee.

Section 921 required SBA to reduce the size standards for four industry categories: construction (including dredging); architectural and engineering services (including surveying and mapping services); ship building and ship repair; and refuse systems and related services. SBA was to propose reductions for the size standards applicable to the four-digit standard industrial classification (SIC) codes included in these industry categories so that no more than 30 percent of the total dollar value of contract opportunities would likely be subject to any set-aside, and the remaining 70 percent would be offered under unrestricted competition.

The amendments to the Small Business Act were added to the House version of FY 87 DOD authorization bill during full committee markup under the sponsorship of Chairman Aspin, with the consent of then-Chairman Mitchell of the House Small Business

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[1] The latter group alleges that agencies too easily achieve their small business targets by buying heavily from small firms in these areas where small firms predominate, thus allowing neglect of small firms in more arcane or technical fields where small firms are harder to locate.

Committee. No comparable provisions were included in the Senate's version of the DOD authorization bill. No hearings on the provisions were held by either the House Armed Services Committee or the House Small Business Committee.

Senators Weicker and Bumpers, then Chairman and Ranking Member of this Committee respectively, sought to be named as conferees on the Defense bill for consideration of the revisions to the Act, which is reserved to the exclusive jurisdiction of this Committee under the Rules of the Senate. Their request was denied by then-Chairman Goldwater.

Senators Levin and Dixon, who serve on the Small Business and armed Services Committees sought to protect this Committee's jurisdiction and to provide an opportunity for public review of the provisions of Section 921 before they went into effect. Under their efforts, Section 921 was modified to require an evaluation of its provisions by SBA, after seeking public comment, and the submission of a report to the Congress by July 15, 1987. The effective date of all of Section 921 was delayed until October 1, 1987. The effective date of the size standard reductions was again delayed in both the DOD authorization act for fiscal years 1988–1989 and the omnibus continuing resolution for fiscal year 1988.

SBA submitted the required report on July 14, 1987. The two volume report questioned the "advisability" and "feasibility" of reducing size standards to control set-asides, and the administration has since testified in opposition to Section 921 in this Committee. The second volume focused on the size standard reductions. The size standard reductions, to achieve the 30%/70% split between set-aside and unrestricted contracting opportunities, were to be based on historical patterns of procurement activity by small business concerns. They did not, and could not, take into account all small business firms available to participate in the Federal procurement market. The Federal procurement market is not a close system. As currently eligible small business contractors are made ineligible by the size standard reductions, other firms can enter the market in response to the reduced competition for small business set-aside contracts. The likely result will be a repeated "ratcheting down" of size standards in pursuant of the questionable goal of the 30%/70% split.

Concurrent with the SBA's efforts to analyze the impact of Section 921, the Senate Small Business Committee solicited comments, in December of 1986, from an array of business interests and from the major procuring agencies. Universally, the procuring agencies identified severe implementational problems with most of the provisions of Section 921 and warned of adverse impacts on small business participation in the Federal procurement market. On July 28, 1987, Senator Dixon, two weeks after receipt of the SBA report, introduced S. 1559, the "Small Business Federal Contracting Restoration Act of 1987." As introduced, S. 1559 focused on the other provisions of Section 921, specifically deferring a resolution of the size standard reduction provision until a hearing could be held. A hearing was held on September 21, 1987. The concept of the Small Business Competitiveness Demonstration Program was suggested by two witnesses, a former Administrator of the Office of Federal Pro-

curement Policy and a representative of the American Subcontractors Association.

On December 17, 1987, SBA proposed for public comment the size standard reductions to implement the requirements of Section 921. The impact of these changes will be shocking for many firms. The current size standards for construction, $17 million for general contractors and $7 million for specialty contractors, were to be radically reduced by an average of 80 percent, as reflected in the chart set forth at Appendix E. According to SBA, about 50,000 construction firms would be eliminated from "small business" status. The three other industry categories designated in Section 921 were determined not to have met the statutory standard for a size standard reduction, except for surveying within the broader category of architectural and engineering services. Thus, Section 921 proved completely ineffective in addressing its proponents' concerns about excessive set-asides in these industries.

The proposed reduction would, however, have enormous impact on construction firms which was either not considered or disregarded by drafters of Section 921. SBA size standards are used to determine much more than whether a firm is eligible to participate in a contracting opportunity set-aside for small business. They determine eligibility for the full range of federal programs, including access to management assistance through Small Business Development Centers and financial assistance, including direct and guaranteed bank loans as well as Small Business Investment Company and Certified Development loans under the Small Business Investments Act of 1958. The SBA Surety Bond Guarantee Program is particularly crucial to many construction firms, especially fledgling and minority-owned firms. Many of these minority contractors would be entirely unable to secure bonding, as required by the Miller Act, in the absence of the SBA Surety Bond program and would thus be barred from doing business with the Federal government.

The Section 921 mandated size standard reductions would also bring what were previously small firms within the subcontracting plan requirements of Public Law 95-507, although these firms will have become eligible "large businesses" only by virtue of the mandated size standard reductions. Thousands of small construction firms would find themselves suddenly not only ineligible for federal assistance, but subject to a variety of new burdens including the filing of small and disadvantaged business subcontracting plans under Public Law 95-507.

Further, many state and local governments refer to SBA's size standards when establishing eligibility for their own small business preference and assistance programs. Thus, there is a great potential for a dramatic size standard reduction to adversely affect many small businesses which do not participate in federal government contracting.

Finally, the same size standards are used to determine eligibility for minority assistance programs such as those authorized by Section 8(a) of the Small Business Act and by Section 1207 of Public Law 99-661. Several commentators have expressed to the Committee that implementation of the proposed size standard reductions

would greatly reduce disadvantaged small business participation in the Federal procurement market.

Senator Dixon, joined by Senators Weicker and Bumpers, crafted a substitute amendment for S. 1559, which was the subject of an April 14, 1988, hearing by Senator Dixon. Testimony in support of the proposed Demonstration Program was received from the Administrator of the Office of Federal Procurement Policy, the SBA, the American Subcontractors Association, the Associated Builders and Contractors, the Committee on Federal Procurement of Architectural/Engineering Services, and a former OFPP Administrator. Supporting statements were received from several affected groups, including the Design Professionals Coalition, the American Congress of Surveying and Mapping, and the Associated General Contractors of America. Based on this testimony, the proposed amendment in the nature of a substitute was further refined into the provision which was incorporated into S. 1993, as Title VII.

Senator Dixon's amendment was accepted by voice vote and is Title VII of the Committee amendment. It is discussed in detail later in this report.

IV. Major Provisions of S. 1993

Section 201—Office of Minority Small Business Certification

Section 201 of the bill establishes within the SBA Minority Small Business Capital Ownership and Development (MSB/COD) office at SBA a division of certification. The original bill called for the Director of the division to be appointed by the Administrator. Although not objecting to the concept of a division of certification, the Administration incorrectly interpreted the bill as meaning the Director would be a political appointee. However, the Committee amendment clarifies this section by simply stating that the division will be headed by a director. Currently, there is a director of the Office of Program Eligibility in the Central Office of SBA who makes eligibility recommendations to the Associate Administrator for MSB/COD on applications for certification. The Committee believes that the persistent problems of certification and evaluations of firms' continuing eligibility for 8(a) demands further attention, and that establishing a statutory office to perform these important reviews and functions is necessary.

In each of SBA's Regional Offices, the bill calls for establishment of an office of the division of certification. The primary functions of these offices will be to receive and review applications for certification for the 8(a) program and to conduct periodic reviews of current program participants to assure their continuing eligibility. By setting up specialized units in the Regional Offices, the Committee believes the Agency will develop expertise and improve the quality and timeliness of decisions, particularly on certifications, which Section 202 of the bill limits to 90 days.

In reviewing applications, the bill directs personnel in the Regional Office to visit the offices and facilities of applicants where appropriate. In some geographically large regions this may be impractical. While the bill allows the Agency some discretion, the Committee believes that an important part of the certification process should include a site visit to evaluate the firm. To perform

this function, the regional division may coordinate with District Office personnel the gathering of pertinent information from propsective program participants, including site visits to the firms' facilities.

S. 1993 also called for Regional Offices to review protests of a concern's status as a socially and economically disadvantaged firm for the 8(a) program, for the Department of Defense Sec. 1207 five percent program and for the subcontracting program authorized by Section 8(d) of the Small Business Act. Under SBA's current regulations implementing the DOD program, protests challenging the status of disadvantaged businesses will be received, processed and decided in the national headquarters of the SBA.

In the agency's view, it would be more advisable to handle these DOD protests in Washington rather than through the Regional Office. The Committee believes it may become necessary, if the number of protests under the DOD program increases significantly, for the Central Office to delegate this function to the region. However, the Committee amendment drops the statutory requirement that these protests be handled by the Regional Office. Furthermore, the Committee notes the agency has recently published regulations on handling protests of a firm's status under the Section 8(d) subcontracting program. Therefore, the reference to 8(d) protests being filed in the region is also deleted by the Committee amendment in order to allow for Agency discretion.

Section 202—Eligibility and Certification

Under current law, to be eligible for the Section 8(a) program, socially and economically disadvantaged individuals must own at least 51 percent of the business and control its day-to-day management and operation. At the time that a firm is accepted into the program, a Fixed Program Participation Term (FPPT) is negotiated with the SBA. By regulation, the maximum initial term may be for up to five years. Within one year before expiration of its initial term, a firm may petition the SBA for an extension of its FPPT, for a maximum period of program participation of seven years.

The Committee has often received complaints and requests for assistance from firms applying for certification or for an extension of their terms. Frequently, the complaints have focused on the applicants' inability to obtain information from SBA on the status of the application, on the length of time of the Agency's review and, in the case of denials of certification, on the soundness of the decision and reasons for the denial. Although final decisions on certification are approved by the Associate Administrator for MSB/COD, the Regional Office recommendation on a firm's FPPT is usually the term approved by the Central Office. Frequently, firms that are very similar but located in different regions may receive very different terms of participation. Moreover, decisions on requests for extensions have produced very divergent results. All too frequently firms have expended valuable resources, including hiring attorneys or consultants, in trying to influence or reverse the SBA decision on an extension request. In the Committee's judgment, these resources could be better utilized in activities more closely related to the firms' business activity.

Section 202 of S. 1993 as introduced established a fixed term of eight years for firms to participate in the programs under Section 8(a) and 7(j)(10) of the Small Business Act. The Committee amendment does not change the term from that originally proposed. Several witnesses noted that a longer term would be desirable and some suggested ten years. The Administration recommended that the current regulatory maximum of seven years was sufficient to achieve the purposes of the program and would allow more participants to receive the benefits of the program. Other comments suggested that no uniform term should be established by statute, instead firms should be allowed to remain in the program until their business development objectives were achieved. Some have argued for varied maximum terms based on industry. The Committee concludes that eight years is an appropriate and adequate time for most firms to achieve the business development aims of the program, and that uniformity and simplicity are overriding considerations. The certainty of a fixed term allows participants time to plan for the future and reduces the need for the "cottage industry" which has developed around lobbying for 8(a) term extensions.

Transition rules are established for current program participants as the greater of their current FPPT, or eight years minus the period of time since the award of the firm's first 8(a) contract. The Committee amendment states that firms in the program as of June 1, 1988, would be eligible for the transition rule.

The bill and the Committee amendment also establish a 90-day timeframe for SBA to approve or deny applications for certification. Under Section 201, the bill requires that within 15 days of the receipt of a completed application, the SBA shall notify an applicant that its application is complete and the date when a final decision can be expected.

Under the bill as introduced, an applicant denied certification could seek reconsideration within 30 days of the denial by the Associate Administrator for MSB/COD. Several commenters suggested that an appeal of the certification denial should not be to the Associate Administrator, but rather to a third party. The Committee agrees and the Committee amendment provides that the Administration advise an applicant who is denied certification of the right to appeal the decision to the Office of Hearings and Appeals (OHA) at SBA. If the denial is sustained, then the applicant cannot reapply for one year from the date of the OHA decision. The Committee understands that appeals to OHA may be time consuming, depending on the volume of cases appealed. It is not intended that the time taken by OHA to decide an appeal be included in the 90-day time period.

Section 203—Graduation Standards

This section recognizes graduation from the program as the successful completion of the firm's program term (as defined in the preceding section). A firm may be graduated if it has exceeded its applicable size standard or if the firm voluntarily determines that it has achieved the goals of its business plan. Further, under an amendment offered by Senator Levin, a firm may be graduated if the owner's net worth makes him no longer economically disadvan-

taged. Upon graduation, a firm is no longer eligible to receive contracts awarded under Section 8(a).

The Committee amendment strikes a provision of the bill which would have allowed use of the term "graduation" in connection with a firm which is no longer owned and controlled by socially and economically disadvantaged individuals as a result of a sale of securities to the public. Such a situation would be the basis for termination under Section 204 of this Act. The Committee elected not to preclude all public offerings of stock, although the experience of the Wedtech case teaches that public offerings must be carefully scrutinized by the Administration to ensure that bona fide ownership and control by eligible individuals are retained. The object of the Administration's inquiry in such cases is not to ensure that the firm is found eligible—as was apparently the motivation in Wedtech—but rather a fair construction of the transaction, bearing in mind that substance controls over form.

Section 204—Termination

Section 204 establishes a formal procedure for termination of program participants, beginning with a recommendation for such action by the Director of Minority Small Business Certification to the Associate Administrator for MSB/COD. If the Associate Administrator agrees with the recommendation, he must provide written notice, by certified mail with return receipt, to the program participant within 15 days. The notice shall state the grounds for termination, and shall apprise the firm of its right to request a hearing. If a hearing is requested, it shall commence within 60 days of receipt of the notice of intent to terminate.

The Committee recognizes that this 60-day time frame will cause SBA to shorten the response time presently allowed a concern following its receipt of a notice of intent to terminate. This response time provides the Participant with an opportunity to attempt to correct the condition(s) which have caused SBA to propose termination. If there can be no informal resolution of the matter, the termination hearing process will be commenced by the issuance of an Order to Show Cause to the Program Participant.

This section establishes six specific grounds for termination:

1. Failure to meet program criteria as a socially and economically disadvantaged small business concern;
2. A consistent pattern of delinquent performance on contracts awarded under Section 8(a);
3. A consistent pattern of failure to make required submissions of information or responses to the Administration in a timely manner;
4. Debarment by any federal contracting agency;
5. Willful violation of rules and regulations of the Administration;
6. Conviction of any of the officers or owners of the firm of embezzlement, theft, forgery, bribery or other offense indicating lack of business integrity.

The Committee added a proviso stating that the termination proceedings established by this subparagraph shall not apply to allegations that a firm has misrepresented its status as a small or disadvantaged business, as prohibited by Section 16(d), or has misrepre-

sented its compliance with the business mix requirements of this bill, as prohibited by the new Section 16(f) added by this Act. These allegations are to be resolved by new protest procedures created by Section 205 of this bill, and the exclusion is merely intended to preclude a firm being the subject of two proceedings at the same time over the same issues. Moreover, an affirmative finding under either Section 16(d) or 16(f) could be grounds for a termination proceeding under subsection (iv) or (v) based on debarment or willful rules violations.

Section 205—Challenging Eligibility

In light of the Wedtech case and other reported instances of ineligible firms participating in the program, the Committee believes that SBA personnel, other procuring agencies and other firms in the program should have clearly defined programmatic avenues to identify and report firms which are believed ineligible for the program. Thus, Section 205 of the bill establishes two statutory processes for ineligible program participants to be reported to SBA and for the question of their continuing eligibility to be quickly resolved.

First, the bill requires the Small Business Administration to conduct an evaluation of a program participant's continuing eligibility if it receives specific and credible information that a firm does not meet the eligibility criteria. Under current regulations SBA invites participation of the public in preventing fraud in the 8(a) program and directs the Associate Administrator for Minority Small Business Capital Ownership and Development to evaluate the eligibility of an individual or firm whenever a member of the public submits credible information. This section tracks closely the current regulations. The bill further provides that, upon finding a program participant ineligible, the SBA must initiate a termination proceeding. SBA must also notify the program participant of the right to a hearing, and the bill provides that a program participant may not be suspended or denied the benefits of the program until a termination proceeding is initiated. The Committee is particularly concerned about the chilling effect that unresolved allegations could have on program participants. Empty allegations should not be used as a basis to deny assistance under the program, and the agency is authorized to summarily dismiss frivolous or repetitive allegations.

Second, the bill provides an appeal procedure for challenging the eligibility of individuals to continue in the program prior to the award of an 8(a) contract. The current 8(a) statute and implementing regulations have no formal protest procedures. The Committee notes that in many other areas of Federal procurement there exist protest procedures. For example, the Federal Acquisition Regulation (FAR) provides for the protest of an award on the basis of size if the contract is set aside for competition among small businesses. While size challenges to 8(a) firms have been brought, no other challenges are authorized. The Committee believes the integrity of the program could be improved and strengthened if protests of a firms' status as a disadvantaged business were authorized. Creating this procedure will allow the eligibility of an 8(a) firm to be quickly reviewed and decided by SBA. The Committee believes that such

monitoring by the Agency and the participants in the program will enhance the image of the program in the minds of the public and will provide an additional safeguard against "front" companies which have plagued the program since its conception.

The Committee received testimony from several witnesses arguing the provision should be eliminated or more narrowly focused. Several commenters were concerned that this new procedure could be used to frustrate awards, and could indirectly discourage procuring agencies from using the program because of potential protests being brought.

It is not the Committee's purpose to delay federal procurements or to encourage vexatious protest. Hence, the Committee amendment retains "interested parties" as those who could protest an 8(a) award. Since a firm not in the 8(a) program would not be eligible to receive an 8(a) award, the Committee does not envision firms other than 8(a) concerns having the standing to protest.

Again, the Committee encourages the Administration to reject frivolous or repeated protests brought against a firm whose eligibility has previously been adjudicated.

Section 301—Business Plan

Public Law 95-507 amended Section 8(j)(10)(A) of the Act to establish a Small Business Capital Ownership Development Program whose purpose was to assist 8(a) firms to develop "comprehensive business plans" that contained specific business targets, objectives and goals. By definition, the business plan would present a description of the products or services provided by the firm; financial data, including a profit and loss statement, a cash-flow analysis and an inventory of capital equipment; a description of the scope of the firm's past, present and future private sector business; and projected 8(a) contract support levels, types of contracts and a description of the means by which these contracts would be fulfilled.

The Committee views the business plan as critical for implementing and attaining the business development goals and objectives of the MSB/COD program. This plan should be considered an active guide or "roadmap"—to be updated, revised and discussed in order to keep the 8(a) firm and the Agency apprised of status, growth, and potential for the firm's success. It should highlight management, technical and financial problems that may arise throughout the firm's tenure in the program and indicate solutions to those problems. The business plan, if properly designed and monitored, should result in a program participant becoming a viable business concern capable of effectively competing in the government and private marketplace after graduation. However, the Committee does recognize that a firm's success or competitive viability cannot be guaranteed by SBA, Rather, the aim is to provide opportunities and support in a well planned and organized manner to all 8(a) participants to be used according to the firm's own initiative, ingenuity and desire to achieve success.

Although genesis of the business plan can be found in Public Law 95-507, enacted a decade ago, its use by the SBA has not been consistent, nor has it fulfilled the Congressional intent. The Committee survey and meetings with Agency personnel revealed that in many cases, throughout the program, the business plan was

used mainly during the certification process, but seldom referred to or updated afterwards. This lack of systematic monitoring of the business development activities of portfolio firms was seen by the Committee as a major flaw and perennial weakness in the overall management of the 8(a) program.

S. 1993 reaffirms the function of the business plan as key documentation of a firm's progression through the 8(a) program by which financial, technical and management assistance, as needed, are provided. Specifically, the bill amends Section 7(j)(10)(A) of the Small Business Act to require each firm to develop a business plan which includes the following elements:

(a) An analysis of marketing opportunities;

(b) An analysis of the firm's strengths and weaknesses in the financial, managerial, technical and personnel areas;

(c) Specific goals and objectives for development based on the above analyses;

(d) A transition management plan, to be incorporated in the fifth year of program participation, stating the firm's plans for ensuring profitable business operation after graduation;

(e) Estimates of 8(a) and non-8(a) contract support levels needed to meet the goals and objectives set forth in the plan.

Previously, completion of the business plan was required by SBA prior to a firm's 8(a) certification and entry into the program. This was a lengthy and complex process which, according to many program participants, was one of the major reasons for the delays in getting into the program. SBA should exercise flexibility in gathering and scrutinizing financial, management or other pertinent information needed to determine an applicant's eligibility or potential for success if accepted in the program. This bill discourages making the business plan a fixed requirement to be completed during the certification process.

Once the firm is certified, and before award of the first 8(a) contract, the owner must submit a "program" business plan, which contains the elements described above, to SBA for approval. This should not only shorten the certification process, but also give the firm an opportunity to seek technical help in properly structuring the business plan, if necessary. It also allows the assigned business opportunity specialist to work directly with the new participant in developing a "working document" that aptly represents a firm's goals and objectives for business development.

S. 1993 broadens the scope of the business plan by injecting three new concepts, each of which reflects a provision of the bill intended to better provide comprehensive business development for all program participants:

(a) A transition management plan (Section 303) must be established during the firm's fifth year of participation which should include specific steps and procedures that enhance the likelihood of profitable business operations after graduation. One of the major findings of the Senate survey was that portfolio firms felt there was no transitional period during which they were encouraged to become less dependent on sole-sourced contracts. Many respondents suggested that exposure to competitive bidding while in the program would have better prepared them for survival in the private marketplace.

(b) Also during the fifth year, a firm must begin to prepare to meet the contract mix requirements (Section 401) of 8(a) and non-8(a) work. Thus, the business plan must reflect the estimates of contract awards, both 8(a) and from other sources, needed to meet the specific goals and objectives of the participant's approved plan. These estimates must fall within the designated percentages in Section 401 by no more than 5% and be accurately monitored.

(c) A Bid and Proposal Cost Program (Section 302) is provided for each participant to help defray costs incurred during preparation of contract offers. This new source of financial assistance is available to 8(a) firms throughout their tenure in the program and should be a valuable resource for aiding firms to effectively compete for government and commercial contracts. The business plan should contain the value of the aggregate awards from the bid and proposal cost program that each participant expects to receive. Because these figures will likely be different for each portfolio firm and subject to change at any time, the Committee reemphasizes the need to keep a business plan accurate and up to date. The Bid and Proposal Cost program replaces a part of the Business Development Expense (BDE) program used in the past by SBA to provide, under certain conditions, working capital for 8(a) firms to purchase equipment and supplies.

Finally, Section 301 requires that business plans be reviewed and updated annually with help from the assigned BOS. To aid the participant in developing comprehensive business plans, the Agency shall offer educational seminars or other appropriate activities. Beginning with the sixth year of program participation, and each subsequent year, the annual review must include verification of the compliance with the business mix requirement under Section 401. However, the Committee expects that attention be given to competitive activity long before the firm's sixth year in the program. Logic dictates that the earlier a participant is encouraged to pursue non-8(a) work, the greater the chances of attaining competitive viability and survival after graduation.

Section 302—Competitive Bid and Proposal Cost Program

S. 1993 establishes a new form of business assistance to 8(a) firms through the Bid and Proposal Cost Fund. This new program will be funded, in part, through appropriations which previously had been used for Business Development Expense (BDE). As a major aim of this legislation is encouraging firms to develop business unrelated to sole-source contracts under Section 8(a), this fund provides an affirmative helping hand in that direction. Assistance to any particular firm shall not exceed $100,000 in a given year and shall otherwise be determined by the Administration. These funds may be used to defray any costs deemed appropriate in connection with preparing an offer for any competitive business opportunity apart from sole-sourced contracts under Section 8(a). The bill as introduced contemplated up-front payments to firms and repayment of one-half of the assistance by the firm if it were successful. The Committee amendment deleted the requirement for repayment and requires firms to apply for reimbursement from SBA, as well as eliminating the separate revolving fund originally proposed.

The prior program of Business Development Expense (BDE) was poorly and inequitably administered and is hereby eliminated.

Section 303—Management Assistance

This section adds two new subparagraphs to Section 7(j)(10) which direct the SBA to establish two management assistance seminar programs for certified firms. The first seminar, which should be offered soon after certification, would train certified firms to prepare competitive solicitations and other fundamentals of doing business with the government.[1] The second seminar would focus participants' attention on developing transition business plans that will enhance their ability to operate successfully after graduation from the program. Given the mandated business mix which firms must meet under Section 401 of this Act, as well as the reality of eventual graduation from the program, it is imperative that both the Administration and program participants focus time and energy on planning for success outside the program. The preparation of a transitional management plan in the fifth year through the program, with appropriate support from SBA, should begin to address this need.

Generally, the SBA has not effectively managed the resources provided to assist firms in the program to obtain management and technical assistance under Section 7(j)(10) of the Small Business Act. Witnesses at the Committee's hearings stated that the assistance made available by the SBA through the "task order" process was often ineffectual. One contractor related to the Committee that the consultant recommended by SBA was inexperienced and knew less about how to solve the 8(a) contractor's problem than did the contractor. Another witness stated a more troubling instance in which the SBA consultant turned out to be a potential competitor, raising the possibility of a conflict of interest.

Aside from the quality of assistance provided, the Committee believes that SBA's approach to providing management assistance in general, and 7(j) assistance in particular, must be improved. The Administration should consider whether the present "task order process" used by District Offices is suitable for responding to the wide-ranging needs of portfolio firms. This approach to one-to-one counseling, which is structured to respond only to specific or individual problems, appears to be too limited to meet the range of problems of 8(a) companies. In many cases a firm needs more comprehensive, in-depth counseling than the task order process allows. The Committee recommends that SBA explore alternative approaches including the use of particular consultants to provide comprehensive services to firms on an on-going basis.

Recent Committee staff discussions with program officials reveal that the Agency has initiated policies to use the network of Small Business Development Centers (SBDCs) to provide counseling assistance to 8(a) firms. In the past, it has not been Agency policy to permit SBDCs to apply and receive 7(j) funding. The Committee understands that SBA has recently changed that policy to allow

[1] Among the topics which might be covered in such a seminar are the establishment of an appropriate accounting system, fundamentals of bonding and insurance, options for financing growth, and other basics of business as they particularly apply to government contractors.

SBDCs to bid competitively for these contracts, which would provide an opportunity for SBDCs to assist 8(a) firms in those areas where the SBDC is the best resource available. SBA should pursue this and other options, wherein cooperation among the various SBA programs can be leveraged to improve the quality of assistance provided to 8(a) firms.

Section 304—Authority for Joint Ventures

S. 1993 as introduced provided authority for the Administrator to approve joint ventures between Section 8(a) firms and other businesses with prior approval of the Attorney General or the Chairman of the Federal Trade Commission. The Justice Department and the Administration both expressed to the Committee their strong opposition to this provision. The Committee amendment deletes the provision authorizing joint ventures.

Section 305—Minority Business Direct Loan Program

This section amends Section 7(a) of the Small Business Act to establish a new direct loan program at SBA for 8(a) companies to finance working capital or to purchase equipment, facilities, materials, supplies or other necessary production or technical assets. The funding for this new program would come from funds previously appropriated for Business Development Expense (BDE). The bill repeals SBA's authority to make BDE grants.

Although BDE is not explicitly authorized in statute, the Congress has annually appropriated $15 to $17 million for BDE. The Administration makes BDE funds available to firms, on an individual basis, to help firms perform specific 8(a) contracts by the acquisition of tooling or equipment necessary to perform the contract. Although SBA regulations also permit the use of BDE to subsidize price differential, grants have not been made for that purpose in recent years. When BDE funds are used to purchase equipment, the contractor records a lien in favor of SBA for the equipment. Once the contract is successfully completed, SBA releases the lien and the firm keeps the equipment. If the firm defaults on the contract, SBA regulations state that the 8(a) company is liable for repayment of the full amount of BDE.

By SBA regulations, each award of BDE must be approved by the Administrator, who has in the past delegated this authority to the Regional Administrators. As a result, each region has developed its own approach to the handling of BDE. In some regions it has been more difficult for firms to obtain BDE, and some firms believed it was not available. Relatively few firms have received BDE, contributing to the perception of political influence in the delivery of program assistance. Also, there have been instances in which BDE funds have been used for other than the purposes for which the funds were granted.

Several witnesses recommended that BDE not be eliminated as a source of equity capital for a company. Unlike a loan, it does not show up on the balance sheet as a liability. In its budget proposals for FY 1988 and 1989, the Administrator proposed the elimination of BDE. They also testified in hearings on S. 1993 against the creation of the new direct loan program in place of it.

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While the Committee agrees that companies in the 8(a) program certainly need capital to purchase equipment, the Federal deficit and the need to leverage resources make a loan program with a below-market interest rate for preferable to outright grants. Such a program the Committee believes will provide firms more access to loans, and Regional Offices are directed to make information available to all program participants.

As introduced, S. 1993 established the direct loan program at 2 percent below the interest rate charged under the Economic Opportunity Loan Program. The original bill also established a separate revolving fund for the program. The Committee amendment retains the 2 percent interest rate subsidy, but deletes the language establishing a separate revolving fund. Thus, this program, like other SBA loan programs, will be funded through the Business Loan and Investment Fund (BLIF), with repayments to this fund.

Section 401—Development of Business Mix Emphasizing Competitive Contract Awards

The purpose of the Minority Small Business and Capital Ownership Development (MSB/COD) Program, and its supporting contract set-aside program authorized under Section 8(a), is to prepare minority small business concerns to graduate with an expectation of success in the unsheltered marketplace at least equal to that of small business concerns generally. The persistent concern is that too many Program Participants are graduating overly dependent on the noncompetitive contracts obtained under the 8(a) program.

The issue of Program Participants over-dependence on sole source 8(a) contracts has been a recurring theme in reviews of the program conducted by the General Accounting Office, the SBA, and various committees of the Congress. In its first major report evaluating the Program, issued in 1975 and entitled "Questionable Effectiveness of the 8(a) Procurement Program" (GGD 75-57), GAO concluded: "SBA's success in helping participating 8(a) firms to become self-sufficient and competitive has been minimal."

Two years later, the Subcommittee on Federal Spending Practices and Open Government, Senate Committee on Governmental Affairs, chaired by Senator Chiles, conducted nine days of oversight hearings on the 8(a) program and offered a series of findings and recommendations to improve the administration of the program. Among those findings was "* * * that in numerous cases disadvantaged businesses were not being properly prepared for entering the economic mainstream because the sole-source set aside did not involve competitive pricing."

Six years after its initial report on the program, the GAO conducted another comprehensive review, issuing "The SBA 8)(a) Procurement Program—A Promise Unfulfilled" (CED 81-55), in April 1981. Again, the GAO found that the program was failing to prepare Program Participants for graduation into an unsheltered market.

In presenting to the Committee the preliminary findings of its 1987 review of the Program, the GAO's witness found little improvement regarding the Program's effectiveness in assisting firms to become self-sufficient businesses. In conducting a detailed analysis of a sample of 35 Program Participants, GAO found that 7 of

the 35 firms were more than 90% dependent on 8(a) contracts after being in the program for seven years or more. Six firms in the sample were actually more dependent in their final year in the Program than they had been in prior years. Basically, GAO concluded that SBA was making virtually no progress in urging firms to voluntarily alter their business mix.

The responses to the Committee's 1986 survey of Program graduates reflected similar concerns about over-dependence and SBA's failure to provide the firms with effective transition management assistance. Survey respondents noted that too much of their business base was derived from noncompetitive 8(a) awards for them to easily succeed following graduation. Telling testimony was heard from a janitorial service firm which suffered huge layoffs upon graduation because of delayed efforts to develop non-8(a) business opportunities.

The Committee is dedicated to addressing the long-term competitive viability of graduates of the Minority Small Business and Capital Ownership Development Program. Developing a business base outside of the 8(a) program is essential in attaining that objective.

Section 401 is designed to effectively address the overdependence issue, by establishing benchmarks for competitive business activity at designated points during the firm's Program Participation Term. This provision should motivate the Program Participant to slowly but steadily increase the volume of its competitive business. Further, under Section 303 (Management Assistance), the SBA is directed to provide Program Participants with transitional management assistance.

As introduced, Section 401 specified a "glidepath" to attaining competitiveness by graduation beginning with 20% competitive business in the fourth year and steadily increasing to 80% in the final year.

All contract awards outside the 8(a) program were to be counted towards meeting the "business mix" requirement, including federal contract awards through unrestricted competition, small business set-aside competition, disadvantaged small business set-aside competition (under the authority of Section 1207 of Public Law 99-661), awards from State and local governments, and commercial contract awards.

Attainment was to be measured on a "look-back" basis, using the aggregate of the firm's business activity since entering the Program.

The "business mix" provision, as introduced, generated substantial adverse comment during the Committee's consideration of the bill. While acknowledging that reducing a Program Participant's dependence on noncompetitive awards under Section 8(a) was an important objective, most witnesses objected to the specific proposals reflected in Section 401. First, they urged that the provision's "requirements" should be modified to "goals", the attainment of which should be measured against a "good faith effort" standard. Second, they maintained that the competitiveness benchmarks were too ambitious, arbitrary in nature, and unrealistic in the ups and downs of a competitive world. The uncertainties of business, it was argued, made the provision unfair, especially for firms that were in the Program because they were disadvantaged.

In response to the concerns forcefully brought to the Committee's attention, Section 401, as reported, has been modified in several important ways. These modifications are designed to liberalize the provision, without abandoning the core concept that the attainment of mandatory "business mix" benchmarks will contribute significantly to increasing the success of Program Participants after graduation. The provision also reflects the Committee's effort to reaffirm the Program's image as a true business development program and not merely a vehicle to obtain sole-source Federal contracts. The modifications to Section 401 include:

First, 8(a) contracts won through competition among Program Participants conducted under the authority of Section 8(a)(17)(E) of the Small Business Act, as included by Section 403 (Contract Awards) of the bill, can be counted towards meeting the requirements for business competitively won. Under the provision as introduced, all 8(a) awards were excluded.

Second, the actual enforcement of the business mix requirements have been postponed from the beginning of the Fifth Program Year until the start of the Sixth Program Year. Under the provision as introduced, a Program Participant could seek the award of unlimited noncompetitive 8(a) contracts only during the first four years, with the business mix requirement coming into play in year four and enforced in year five. The Committee modification effectively adds an additional year. However, the Committee observes that prudent business planning obviously calls for a Program Participant to actively pursue competitively awarded business from the outset. It is intended that the firm's efforts and success is this regard will be monitored by the assigned Business Opportunity Specialist, at least during the annual review of the firm's business plan.

Third, the provision, as reported, liberalizes percentages contained in the "business mix" benchmarks, and changes them less frequently. The maximum percentages of the Program Participant's new sales must now meet the following benchmarks:

By the end of program year	Percentage (sole-source) 8(a) business	Percentage (non-sole-source) non-8(a) business
Five	70	30
Seven	50	50
Eight (graduation)	25	75

The determinaton of whether a Program Participant has attained its "business mix" benchmark is still to be made on a "look back" basis for the Program Years specified, but is now measured only on the basis of "new sales" made during that year. In devising regulations, "new sales" should be measured in business terms; that is, actual revenues received (or accounts receivable) from contracts awarded during the program year being measured. The provision specifically notes that a Program Participant failing to attain its required business mix at the close of its fifth Program Year may attain compliance during the subsequent year.

The Committee believes that the "business mix" requirements established by Section 401, as modified, are reasonable and attainable by any Program Participant that seriously intends to be a viable firm upon graduation from the Program. The flexibilities already provided make it unnecessary to abandon these benchmarks of competitiveness as requirements and convert them into mere "goals".

In the event that a Program Participant fails to attain a "business mix" benchmark during its development, it is only foreclosed from receiving any additional noncompetitive 8(a) awards until returning to compliance. The firm remains eligible for all other forms of management and financial assistance available to Program Participants, including the new direct loan program authorized by Section 304 of the bill. Missing a "business mix" benchmark would not be grounds for eliminating a firm from the Program. Eligibility for award of additional noncompetitive 8(a) awards is restored as soon as the firm can once again certify that it meets the applicable benchmark. If a Program Participant failed to attain a particular competitive milestone and lost eligibility for further noncompetitive 8(a) awards, eligibility could be reestablished at any subsequent time.

As introduced, the "business mix" provision sought to provide flexibility in two ways. First, the SBA Administrator was provided the discretion to waive the "business mix" requirements in individual cases upon determining that certain conditions had been met. The conditions enunciated in Section 401 are that: (a) the Program Participant's awards received under the authority of section 8(a) exceeded the specified percentages by no more than 5 percent; (b) the Program Participant has demonstrated a reasonable expectation of receiving adequate competitive awards to bring it into compliance; and (c) the denial of additional non-competitive 8(a) contracts would cause severe economic harm, jeopardizing the firm's future ability to meet subsequent business mix requirements. Second, the provision recognizes that the "business mix" requirements could be considered onerous when applied to any firm "grandfathered" into the Program with five or fewer years remaining on its Program Participation Term, pursuant to the "grandfathering" provision included in Section 202 (Eligibility and Certification). For these firms, the "business mix" requirements would be treated only as goals, to be activity pursued through "good faith" efforts. The Committee fully expects that the Administration will assess whether a "grandfathered" Program Participant has actually made a reasonable effort to attain the applicable mix of competitive and non-competitive contract awards. In the event that such a "good faith" effort has not been made, the Administration may determine the firm to be ineligible for further noncompetitive awards under the 8(a) program.

Further, the 75% figure for competitive business in the final year of program participation constitutes only a goal, in that enforcement necessarily works on the basis of the previous year's activity. This constitutes a statement of principle by the Committee that firms should leave the program with no more than 25% of their business dependent on sole-source awards. This goal is identical to the final year goal in H.R. 1807.

Ready access to noncompetitive contract awards represents a significant privilege of the Program. Such contract opportunities are made available to assist the Program Participant to develop. Development of competitive skills, and their successful application in the unforgiving business environment, should be required if Program Participants are to successfully leverage the benefits of sole-source procurements into long-term viability in the competitive marketplace. That is the balanced approach reflected in Section 401, as reported.

Section 402—Planning 8(a) Contract Activity

Providing 8(a) firms with significant and diverse contract opportunities has been a consistent concern of the Committee. Under P.L. 95-507 the Congress authorized a temporary pilot program to give the Administrator enhanced authority with respect to one agency, as designated by the President, to select and request reservations of contract opportunities for portfolio companies. This pilot authority was extended for additional periods under Public Law 96-302, Public Law 98-47, and Public Law 99-561. While modest success has been realized in the pilot programs, the Committee believes that, in order for more firms to benefit, systemic changes must be made.

Each year the SBA negotiates with other agencies and departments procurement goals for purchashing from small business and minority-owned businesses. Generally, SBA has reported that most agencies have met their goals. The Committee notes, however, that even with the goaling process for the 8(a) program, more than fifty percent of the firms in the portfolio in any given year do not receive any contractual assistance under the program.

Experience has shown that the more successful firms in the program are those which have marketed contract opportunities themselves. One of the keys to effective marketing is knowing what types of goods or services the procuring agencies will need. To facilitate firms' ability to identify agency requirements, S. 1993 as introduced provided that each federal agency which reported purchases of more thn $50 million in fiscal year 1986 or subsequent years shall prepare forecasts of its expected contracting activity. The forecasts should include the number of contract opportunities, the dollar value and range of dollar values, the anticipated time of the fiscal year that the procurement request would be issued, and the activity responsible for awarding and administering the contract. The bill also provided that these forecasts should identify contract opportunities for the 8(a) program.

The Committee received favorable comments from contractors on this provision. Some expressed concern that forecasts not be limited to what the contracting agency considered to be appropriate 8(a) opportunities, and that the scope of forecasts should be broadened to include all small businesses. The Committee agrees with these suggestions, and the Committee amendment clarifies that agency forecasts should be provided to the Office of Small and Disadvantaged Business Utilization of each agency which in turn should make the information available to small businesses.

This section also requires that, in conjunction with its annual review of each firm's business plan, SBA should prepare a forecast

of contract requirements for the coming year which may be aggregated by program offices and used as the basis for SBA's negotiations of 8(a) contracting goals with procuring agencies, and the Committee directs SBA to do that by compiling the information on anticipated demand from the porfolio.

Section 403—Contract Awards

Recognition of Self-Marketing

The severely uneven geographic distribution of contract awards made under the Section 8(a) authority among various Programs Participants has been a persistent concern with the Minority Small Business and Capital Ownership Development Program. This concern has been expressed by Program Participants as well as in outside assessments of the Program.

In its 1981 report to the Congress, "The SBA 8(a) Procurement Program—A Promise Unfulfilled," the General Accounting Office found that 50 firms out of 4,600 received approximately 31 percent of the dollar value of all awards, slightly more than $1.7 billion out of a total of $5.5 billion awarded under the authority of Section 8(a). At the time, approximately 50% of the 4,600 Program Participants obtained no awards, or very small awards aggregating to less than $100,000, under the 8(a) Program. This same concern appeared in the responses to the Committee's 1986 survey of Program graduates. The continued existence of the problem was reconfirmed in the General Accounting Office's testimony to the Committee presenting the preliminary findings of its 1987 review of the Program requested by Representative Jack Brooks. GAO found that of 2,938 active Program Participants, 1,225 did not receive any 8(a) awards during 1987 and another 555 firms received $1000,000 or less in 8(a) contract awards under the Program. Thus, by 1987, approximately 60% of the Program Participants were receiving little or no business development assistance through the awards of federal contracts under the Program. By contrast, by 1987, the top 50 firms were receiving 35 percent of the total dollar value of all awards made under the authority of Section 8(a), or approximately $1.062 billion out of a total of $3.014 billion.

The Committee observes that the persistent uneveness in awards to various Program Participants may be partly traceable to a misconception among the majority of Program Participants regarding the actual operation of the contracting element of the Program. According to SBA's public information on the Program, an 8(a) firm might well be led to believe that contracts are allocated by SBA to Program Participants based on the 8(a) contract support requirements contained in the firm's approved business development plan, and in SBA's ability to secure contracting opportunities from procuring agencies. Contracting opportunities are occasionally offered to the SBA spontaneously by the procuring agencies for award as subcontracts to appropriate firms in the 8(a) "portfolio". Moreover, SBA field offices send "search letters" to Federal agencies on behalf of Program Participants, which sometimes result in contracting opportunities being offered to meet the business development needs of the participanting firms.

However, as the successful Program Participant can readily confirm, such a proactive SBA—passive Program Participant scenario is not the prescription for Program success. Rather, aggressive "self-marketing" to the federal agencies has proven to be the surest path to success in the Program. Most of the successful firms have engaged in costly and time-consuming marketing efforts, closely akin to marketing in the competitive commercial and government markets.

First, the firm must identify the agencies that have need of requirements that they can perform. Having identified the contract opportunity, the firm must convince the procuring agency that the work can be performed by a small disadvantaged business concern, preferably their firm. If more than one Program Participant is capable of performing the work, and the contract calls for the furnishing of professional or technical services, the agency may choose to conduct a "technical shoot-out", a competition on the qualifications of the prospective contractors and their proposed approaches to meeting the agency's requirements. The contracting opportunity is then offered to the SBA by the agency along with the agency's candidate for award.

Having been formally offered the contracting opportunity, the SBA may, under existing procedures, offer its own candidate for the "subcontract" award. However, it does so at its own peril, since the agency has the authority to make the final determination of the Program Participant's qualifications and whether the award price represents a "fair market price." These agency determinations are subject to SBA appeals, but generally the appeal route is not the most beneficial way to initiate performance of a contracting opportunity under the Program. Further, a firm which identified and successfully self-marketed the opportunity, perhaps at significant cost, is unlikely to stand by idly while "its contract" is awarded to another firm. Given such potential for controversy, awards for the more valuable professional and technical service contracts are generally made to the Program Participant recommended to SBA by the agency.

Contract awards for the furnishing of items of supply, non-professional services, or construction may not be preceded by intense self-marketing or the additional rigors of a technical competition. Nevertheless, even these opportunities have often been to some degree "created" by a Program Participant, who strongly anticipates reaping the rewards of its efforts.

Section 403 of the bill directs the award of a non-competitive 8(a) contract to the Program Participant recommended by the procuring agency offering the contract opportunity if several conditions are met. First, the procuring agency has determined that the Program Participant is capable of performing the contract, and award will be made at a "fair market price." Second, SBA has determined that the proposed award is consistent with the Program Participant's approved business plan. And, third, the Program Participant's compliance with any business mix requirement or goal has been determined on the basis of the Program Participant's self-certification, or otherwise. Thus, this provision states a strong statutory recognition for "self-marketing" by Program Participants in the

pursuit of contract opportunities eligible for non-competitive award under the Program.

The provision does reserve to the Administrator limited authority to direct a "self-marketed" contract opportunity to another Program Participant if necessary to attain overriding concerns of equitable distribution. The section recognizes the equitable geographical distribution among SBA's various regions and among individual Program Participants as an important value served by the 8(a) program. It is the Committee's intention that this authority be used sparingly. Thus, the section states as general principle that self-marketing by a firm and the choice of a procuring agency are to be respected by SBA. However, ultimate decision-making authority does rest with the agency, and the Committee is also concerned about the grossly uneven distribution of 8(a) contracts reflected in the chart contained in Appendix B to this report.

The section accords the Administration no discretion with respect to diverting a competitive award made under the authority of Section 8(a). Such a competitive award must be made to the Program Participant or Participants selected through the competition conducted by the procuring agency.

Section 403 also provides the Administration guidance concerning the role of various SBA employees with respect to the award of subcontracts under the authority of Section 8(a). The head of the MSB/COD program for the SBA region in which the agency offering the contracting opportunity is designated as the "source selection official," that is, the official authorized to select the Program Participant for the award of the "subcontract." The Committee does not intend to eliminate all responsibilities of the Business Opportunity Specialists to assist companies in locating and pursuing contract opportunities, but does intend to centralize the final authority for contract award at the regional level. The purpose of this change from current practice is to permit Business Opportunity Specialists to focus more fully on other aspects of business development.

If the contracting opportunity meets the specified standards for a "national buy," the provision accords to the Administrator discretion to designate the source selection official. It is anticipated that the Administration will promulgate additional regulatory guidance regarding "national buys" and so-called "local buys." Further, it is expected that the source selection responsibility with respect to national buys will be vested in a single Administration official and not be permitted to float. Finally, it is intended that the authority to execute the actual subcontract award will remain with those Administration employees possessing appropriate contracting officer warrants.

Competition for 8(a) Contracts

Section 403 also addresses the key issue of competition among Program Participants for certain contracting opportunities set aside under the authority of Section 8(a). Presently, all such contract opportunities may be awarded on the basis of noncompetitive negotiation with a single Program Participant, that is, on a sole-source basis.

Competition among Program Participants is beneficial on at least two grounds. First, it will foster throughout the term of the Program the steady development of competitive skills essential after graduation. Second, competition will serve as an effective safeguard against abuses that can flourish in a sole-source contract award environment that is presently free of any effective, institutional checks. As introduced, Section 403 adopted the competition thresholds similar to H.R. 1807, principally a $2 million threshold. Under this provision, if the anticipated award value of the contract (including all priced options) exceeded the threshold, the procuring agency would conduct a competition among eligible Program Participants.

The proposal to require competition for the award of contracts set aside under the authority of Section 8(a) generated substantial comment from Program Participants, and those representing them. The proposal was questioned on two levels. First, whether it was appropriate to statutorily require competition in the Program. And second, if competition was to be mandated, at what dollar threshold should it be required and what evaluation factors should be reflected in the resulting competition.

Several witnesses who testified questioned the wisdom of statutorily mandating any competition in the Program. They asserted that the authority to make sole-source contract awards was a key tool in making use of the federal procurement system as a business development tool for 8(a) firms. In their view, too many Program Participants, especially the smaller firms early in their developmental cycle, would be forced by a competition requirement to divert resources away from more important business development activities. They also argued that it was unlikely that these firms would be able to compete effectively against larger, more mature Program Participants. Finally, these commentators emphasized that some procuring agencies already make use of informal technical competitions to determine the best qualified offeror with whom to enter into formal negotiations. These witnesses acknowledged the utility of technical competitions in sharpening competitive skills. However, they emphasized the costs inherent in such technical competitions, and the drain they place on the limited resources of 8(a) firms.

However, the Committee was impressed with the action taken by the House, and also with the obvious abuses of sole-source awards of very large contracts manifested in the Wedtech case. Hence, the debate focused on the dollar value of a contract opportunity above which there would be mandatory competition. Most of the testimony and comments received from 8(a) argued against the $2 million threshold specified in Section 403. Program Participants providing professional and technical services, where contract opportunities above the proposed threshold were most common, were most vehement in their opposition, asserting that a low competition threshold would retard the potential for growth of such firms. They strongly advocated a competition threshold at $10 million, or above. In contrast, Program Participants providing construction services were least concerned about the proposed $2 million threshold for mandatory competition. Most of the construction contracting opportunities made available to the Program fell below the pro-

posed threshold, and competition for such construction contracts through the sealed bid method was less costly, and also common to awards in other segments of both the government and commercial construction markets.

Utilizing data from the Federal Procurement Data System, the Administrator of the Office of Federal Procurement Policy (OFPP) questioned whether the $2 million threshold was too high, if the committee wished to inject competition into the Program in any significant degree. Based on data for fiscal years 1981 through 1987, a $2 million dollar threshold would subject to competition only between 2% and 3% of the number of contract actions within the Program. For example, in FY 1985, there were 3,866 awards under the Program, of which only 106 (2.7%) fell above the proposed $2 million threshold. However, the same proposed threshold would reach between 35% and 50% of the Program's total dollar value during the same seven fiscal years. Again using the FY 1985 data as an example, the 106 awards made under the authority of Section 8(a) ultimately resulted in slightly over $909 million in obligations, or approximately 34% of the Program total of $2.66 billion. In the view of the OFPP Administrator, the mandatory threshold for competition would have to be set at between $500 and $750 thousand, if the Committee intended to bring competition to any significant number of 8(a) contract award actions.

As reported, Section 403 requires competition among Program Participants for any contracting opportunity with an anticipated award price, including any options, exceeding $5 million. The Committee chose to increase the threshold for competition for the following reasons. First, the higher threshold should still deter the resort to political influence and other abuses that too frequently accompany the pursuit of the few, very large dollar value contracts awarded on a sole-source basis under the authority of Section 8(a). Second, the Committee accepted the argument that a competition requirement broadly applicable to contracts under the Program held too much potential for adversely affecting too many Program Participants. In particular, it seems reasonable that smaller, newer Program Participants would stand little reasonable chance of successfully competing with larger, more mature Program Participants. A broadly applied competition requirement, coupled with a statutory preference for "self-marketing" of contracting opportunities below the competition threshold, would likely result in even greater unevenness in the distribution of awards under the Program.

Rather than focusing on price competition for contracting opportunities within the Program to foster development of the competitive capabilities of 8(a) firms, the Committee chose to focus on the "business mix" requirements of Section 401. Program Participants will have to clearly demonstrate their competitive skills at specified milestones in the Program to be eligible for further noncompetitive awards under the Program, but the Program Participant will be free to choose the market and the contract competition in which to display its competitive skills, thus significantly enhancing the likelihood of success.

Affording Contracting Opportunities to the Program Graduate

Section 403 also addresses concerns with respect to helping 8(a) firms immediately after graduation to make the transition to an unsheltered marketplace. Under current practices, once a contracting opportunity with potential for future follow-on requirements enters the Program, there are very strong pressures to keep it within the Program. Such a situation works a significant hardship on a firm which is the incumbent contractor for such contract when the firm graduates. This is especially true if the contract represents a significant portion of the Program Participant's business base at the time of graduation, and in spite of the fact that the firm may have won the contract through a competition with other Program Participants. Upon graduation, the firm becomes ineligible to compete for the contracting opportunity if it remains within the Program. To provide some relief, Section 403 provides authority to the agency having the contracting opportunity with follow-up potential to solicit the follow-on opportunity on an unrestricted basis under limited circumstances. First, the incumbent contractor must be a Program Participant. Second, the solicitation for the follow-on requirement will be issued after the graduation of the incumbent Program Participant. Third, the incumbent Program Participant must make a request that the follow-on contracting opportunity be next solicited on an unrestricted basis. And, finally, the Program Participant's request must be approved by the agency head making the contracting opportunity available.

It should be emphasized that the Committee expects the contracting opportunity to return to the Program at the time of the solicitation following the one for which this special authority may be exercised. The Committee viewed this authority as a less disruptive approach to assisting with the transition of Program graduates than the provision reflected in Section 19 of H.R. 1807, which permits a Program graduate to be considered "small" for specified purposes, despite that its actual size is 125% of the applicable size standard.

Efforts to Address Exponential Growth—the "150% limitation"

As introduced, Section 403 included a provision concerning exponential growth in contracts awarded to some Program Participants, which at time of performance prove to be beyond their capabilities. The controversial awards to the Wedtech Corporation, including the $27 million Army engine contract followed by a $135 million Navy pontoon contract, are probably the most egregious examples of this concern expressed by the procuring agencies and members of the Committee. The provision prohibited the noncompetitive 8(a) contract award to a Program Participant, if the anticipated award price exceeded the size of the firm's largest previous contract by more than 150 percent, unless the firm was specifically determined to be capable of performance by the same SBA regional official that authorizes 8(a) awards. This provision, which was strongly opposed by many members of the minority business community, was deleted by the Committee amendment.

Bid Protests

A provision was included in the section which specifically recognizes that protests arising out of the solicitation and award of a contract opportunity restricted to eligible Program Participants shall be eligible for resolution within the various forums provided by statute or regulation to hear and decide such "bid protests." The new provision makes clear that any protest regarding a Program Participant's eligibility to participate in the Program and thus be eligible for award of the contract under the authority of Section 8(a) is specifically excluded. Such protests will be resolved pursuant to Section 7(j)(10)(K), which is added by Section 205 (Challenging Eligibility) of the bill.

Section 404—Contract Performance

This section concerning performance of contracts awarded under Section 8(a) is intended to ensure that the benefit of sole-source, negotiated contracts with Federal agencies flow only to those who are the intended beneficiaries of this program. The section first provides that contracts may be completed by the firm to which the contract was awarded notwithstanding that the firm has graduated from the program.

It goes without saying that the general rule for federal procurement, with certain significant exceptions, is free and open competition. Sole-source contracting is intended by Congress to be used only in cases of necessity or where an overriding federal purpose, such as the promotion of socially and economically disadvantaged businesss, is served. Nonetheless, the 8(a) program has been meligned and plagued by instances in which 8(a) contracts have effectively been transferred to non-disadvantaged businesses through sale or merger of the 8(a) concern.

Many 8(a) firms have expressed concern to the Committee that the bill as proposed unreasonably limits a participating firm's prerogatives to deal with its property as it sees fit. The bill as originally drafted required performance of the entire contract, including all options, and provided that transfer of contract to another business would result in termination of the contract for default, thereby placing the cost of reprocurement on the contractor.

The Committee does not intend to unreasonably burden program participants who may, from time to time, face unforeseen circumstances which necessitate sale of the business, and that it may be in the best interests of all concerned for the contract to be continued.

However, no legitimate claim can be made that a firm which has acquired a government contract on a sole-source basis can reasonably expect to be able to transfer the benefits of that contract to one who could not have acquired the contract initially.

The Committee amendment modifies the original text of S. 1993 to provide that transfer of a contract *during the initial year of performance* will result in termination of the contract *for the convenience of the government.* (New text in italic). Termination for convenience of the government means that the contractor will not have to pay the costs of reprocurement incurred by the government, thus removing a significant burden from the contractor.

Moreover, termination is specifically required only in the first year of the contract. Further, the section provides for waiver authority by the Administrator if the proposed recipient of the contract would have been eligible to receive the award initially, or if the initial contractor is unable to exercise control over the firm due to death or disability.

Further, the Administrator of SBA may waive the termination requirement if the head of the procuring agency certifies in writing that termination of the contract "would severely impair attainment of the agency's program objectives or mission."

Section 405—Appeal of Agency Decision

Under section 8(a)(1)(A) of the Small Business Act, the Administrator is authorized to appeal to the Secretary or head of the department or agency a contracting officer's refusal to set aside a contract for the 8(a) program. The statute further provides that the Secretary or agency head shall provide an answer to SBA's request within five working days. The Committee notes that the Administrator has seldom utilized this authority, and very few of the appeals which have been brought have been upheld by the agency head. Tables contained in Appendix D list the status of recent appeals and decisions.

The bill as introduced sets out a timetable for the submission of the Administrator's appeal and consideration by the agency head. It also provides that action on the procurement shall be suspended pending the final determination by the Secretary of the Agency. The Committee amendment further clarifies that the agency head shall provide in writing reasons for the denial which shall become a part of the contract file. The written reasons shall be provided when the agency head denies the request for reconsideration from the Administrator.

The Committee believes that the Administrator should use this authority judiciously, and the agency head should not summarily reject the Administrator's appeals. The Committee believes that written justification of the agency decision denying the award should be provided and made a part of the contract file.

Section 501—Associate Administrator for Minority Small Business and Capital Ownership Development

A. In General

As noted earlier, Public Law 95-507 amended Section 7(j)(10) of the Small Business Act to create the "Capital Ownership Development Program" to provide assistance exclusively for certified Section 8(a) firms. The program, referred to as Minority Small Business and Capital Ownership Development (MSB/COD), is managed by an Associate Administrator (AA). The AA/MSB/COD is charged with wide-ranging responsibilities for management and delivery of all services and activities authorized under Sections 7(j) and 8(a) for certified firms.

The Committee has become increasingly concerned that many of these services mandated for 8(a) firms have not been adequately nor consistently delivered and that the five Associate Administrators appointed since the program's inception have, at best, given it

a "revolving door" image which shifts each time a new president is elected or relected. The effect of these ins and outs of the program head has been deleterious in that management from top down or bottom up is practically non-existent (see NAPA Report Summary, supra). Comprehensive training programs for middle managers and other key personnel charged with actual delivery of management and technical assistance to firms have not been well established. Monitoring of business plans varies from region to region and district to district. Reporting and analyzing firms' successes and failures have never been achieved. This Committee's 1987 survey was the first comprehensive study done in this regard since the office of Associate Administrator was created. In fact, performance of most of the duties charged to this office has been the subject of ongoing criticism by program participants, as well as the myriad of government reports cited earlier and the office has fallen far short of the expectations of this Committee.

Section 501 of S. 1993 aims to remedy this situation by designating that the AA/MSB/COD be a career appointee whose qualifications should include demonstrated knowledge of the Federal procurement process, good management skills, awareness of technical and financial resources available to participating firms, and dedication towards achieving the goals and objectives of the MSB/COD program. As a career appointee, this individual should bring greater professionalism and consistency to the program and be more apt to remain in the position from administration to administration. Moreover, the Committee hopes to reduce the level of "political influence" or pressures to which the Associate Administrator might have been subjected in the past whether from the White House, Members of Congress or others involved in partisan politics. The crucial decisions affecting eligibility of program participants as well as awards of lucrative federal contracts must be based solely on the merits of the individual firms. The Committee believes that giving the Associate Administrator the procedural protections of the Civil Service system will help insulate him or her against the kind of political influence peddling which has been testified to in the Wedtech affairs.

B. Business Opportunity Specialists

The Committee recognizes that the Business Opportunity Specialist (BOS), formerly referred to as the Business Development Specialist (BDS), plays a vital role in the overall administration of the MSB program. The BOS makes frequent contact with portfolio firms and is charged with the delivery of the business development resources that drive the program, such as financial analysis and planning, marketing, management, technical matters, and procurement activity—resources which, if properly administered, should enable a firm to grow and survive competitively after graduation.

In studies such as the 1981 GAO Report to Congress, "The SBA 8(a) Procurement Program—A Promise Unfulfilled," the Senate survey of graduated firms and from testimony of witnesses at numerous hearings, the Committee has been made aware of the uneven quality of SBA's Business Opportunity Specialists (BOS's). The NAPA report found that many persons designated BOS lack college training and, perhaps more importantly, direct experience

in or exposure to the business community. They are, however, expected to be skilled teachers and counselors, expert in their subject matter, and knowledgeable of sources to which they can refer their 8(a) clients, according to the report.

Since a major thrust of S. 1993 is the development of business opportunities for each 8(a) firm, including comprehensive management and technical assistance, the Committee believes it imperative to establish a Career Development Training Program to train BOS's according to their individual needs in these areas. This training effort must be nationally coordinated to ensure greater consistency and quality in the delivery of vital resources to all 8(a) program participants.

Section 501(b) of S. 1993 mandates not only that Business Opportunity Specialists receive comprehensive training, but also provides that each district office be assigned adequate staffing to effectively carry out the duties of the BOS in assisting 8(a) firms. The original draft of the bill included specific recommended duties and a ratio of BOS staff to portfolio firms. After discussions with SBA central and field offices, and after being apprised that since release of the NAPA report the agency had begun to formalize plans for a national training program, much of this specific statutory language was deleted by the Committee amendment. This is by no means an indication that Committee members feel a lesser degree of urgency or priority in either the implementation of comprehensive training of Business Opportunity Specialists, or the placement of sufficient staffing to deliver quality business development services to 8(a) firms. So that the Committee's intent remains a part of the history of this legislation, specific recommendations to the agency for the effective utilization of the BOS are delineated in this report.

Guidelines to SBA to emphasize business development and the role of the Business Opportunity Specialist.

(1) The SBA should create a Career Development Training Program to determine the individual needs of Business Opportunity Specialists and to oversee completion of their training. This initial effort should be completed in no more than one year. Following this period of training, the BOS should be able to implement the areas covered in the SBA MSB Standard Operating Procedures (SOP-80-05), including financial analysis, marketing, management, procurement activity and technical assistance. The objective of each BOS is to strive to aid in the development of 8(a) firms so that they leave the program more likely to survive in a competitive marketplace. Successful completion of this training program should be a requirement for continued employment as a BOS.

(2) The role and responsibilities of the BOS should be clearly defined and adhered to by SBA. Assuming that the following duties are not performed by higher level managers or program officers or duplicative of duties of other line personnel, the Committee suggests that responsibilities of the BOS shold include:

ensuring that the Program Participant develops a business plan which sets forth realistic and attainable objectives;

assisting Program Participants to identify and obtain contracts to attain the objectives set forth in the Program Participant's business plan by analyzing the procuring agencies; forecasts of 8(a) contract opportunities;

assessing the progress of assigned Program Participants in achieving the objectives set forth in their business plans by periodically conducting independent reviews and joint meetings with such Participants;

monitoring assigned Program Participants to assure that they acquire private sector or non-sole source contracts along with 8(a) contracts after an established period of time in the program;

continuously assessing client needs as a basis for designing 7(j) assistance;

facilitating the delivery of management and technical assistance and the delivery of other programs of the Administration;

facilitating the transmission of information between Program Participants and the Administration as may be necessary; and

arranging meetings among Program Participants, if appropriate, to discuss problems and recommend improvements to the program.

(3) The ratio of firms in each 8(a) portfolio per BOS should not exceed 20:1. As discussed earlier in this report, the number of firms assigned a BOS in various regions now ranges from 1 to 2 to 40 or more. The Committee believes that the effectiveness of even a well trained BOS would be hampered with forty or more firms. While a 20:1 ratio may not be ideal for every BOS, it at least sets a goal which the Agency should strive to achieve as soon as possible.

The Agency should develop new, uniform standards for the entry level BOS, who will be newly hired. Practical business experience coupled with an undergraduate business degree from an accredited school should be requirements.

Section 502—Prohibited Actions

Section 502 would define the relationship that an SBA employee or past employee could have with an 8(a) firm. An SBA employee cannot, during his or her term of employment and for a period of one year thereafter, take or participate in any of the following actions with respect to an 8(a) firm that was in the program during the employee's term of employment:

(1) The buying, selling or receipt of any legal or beneficial ownership of stock or other ownership interest or the right to acquire any such interest;

(2) The making or carrying out of any agreement to obtain any such right or interest; and

(3) The receipt of any other benefit or right that may reasonably considered to be obtained as an incident of ownership.

Any current or former employee who violates this section would be subject to the civil penalties provisions of the Program Fraud Civil Remedies Act of 1986, which would allow the government to recoup twice the amount of any false claim. The Committee believes that civil administration remedies are more likely to be pursuant than criminal prosecutions.

This section further prohibits any SBA employee who has the authority to take, direct, recommend, or approve any action taken under 7(j) or 8(a) from exercising or threatening to exercise that authority on the basis of the political activity or political affiliation

of any party. Employees would be required to report to the Inspector General whenever their participation in such an action has been directed or solicited. An employee who violates any of these prohibitions would be subject to disciplinary action including separation from service, reduction in grade, suspension or reprimand.

Section 503—False Representations

Perceptions of abuse of the status as a "small business concern" or a small disadvantaged business have consistently plagued the various assistance programs authorized under the Small Business Act. In particular, the Minority Small Business and Capital Ownership Development Program and its contracting program under Section 8(a) have been persistently plagued by a broad public perception of abuse. The award of lucrative sole source contracts to "front companies" is a recurrent allegation that probably receives greater credence than the facts would warrant. Nonetheless, sufficient instances of "front company" abuse exist to suggest that further deterrence is needed. Individuals seeking to wrongfully claim "small disadvantaged business" status should be confronted with a more difficult choice. The bill seeks to move effectively deter abuse both by increasing existing criminal penalties provided in the Small Business Act and by making available new administrative civil remedies recently enacted by the Congress.

The array of sanctions enunciated in the provision are enforceable for willful misrepresentations of status as a small business concern or a disadvantaged small business concern across a board range of programs authorized by the Small Business Act, which faciliate access to Federal procurement contracts, surplus Federal property, grants or other financial assistance under Small Business Innovation Research (SBIR) Program, or subcontracts under Federal procurement contracts. The sanctions also attach to false representations of status to gain access to other programs authorized by Federal statute which make specific reference of section 8(d) of the Small Business Act as the definition of eligibility for participation in such program.

Section 503 of S. 1993 increases the Act's current maximum fine from $50,000 to $100,000, while maintaining the maximum prison term at 5 years. While the Committee supports this increase, it recognizes that the deterrent value of these criminal penalties is quite limited. United States Attorneys may be unenthusiastic about pursuing such case to trial. Prosecutorial resources are limited and juries may be hesitant to send a defendant to jail for falsely claiming to be a small disadvantaged business.

The Committee sees greater potential deterrence in the new administrative civil remedies provided under the Program Fraud Civil Remedies Act of 1986. Investigation and prosecution of any alleged false statements or false claims are vested with the agency subject to these fraudulent acts. Protections for the accused individual are provided by a statutory requirement for a review of each case by the Justice Department and the right to a hearing according full due process rights, if the case is taken to a hearing. The Act authorizes a civil penalty of not more than $5,000 for each instance of a false statement or a false claim and further permits the Government an assessment in lieu of damages sustained by the

United States because of a false claim in an amount not more than twice the amount of such false claim. Finally, a finding that a person had made a false statement or submitted a false claim would provide a basis for initiating a debarment proceeding from eligibility for award of any federal contracts for a period of up to three years.

The provision also makes clear that a misrepresentation of one's status as a disadvantaged small business concern constitutes grounds for an agency to initiate a suspension action or a debarment proceeding under the authority of Section 9.4 (Department, Suspension, and Ineligibility) of the Federal Acquisition Regulation (FAR). Such a false statement should be considered an offense indicating a lack of business integrity or business honesty that seriously and directly affects the present responsibility of a prospective Government contractor or subcontractor. The provision is expressly intended to remove any doubts.

The provision further permits the Administration to make a finding of "ineligibility" for further participation in a series of programs authorized by the Small Business Act upon a finding of a willful misrepresentation of status as a small business or a disadvantaged small business. Upon such a finding an individual or a firm would be eliminated from participation in any of the programs authorized by Sections 8(a), 8(d), 9, and 15 of the Small Business Act for a period not to exceed 3 years. Before imposing such an ineligibility, the accused firm should be accorded a due process hearing, probably under the agency's procedures specified for hearings under the Program Fraud Civil Remedies Act.

In the final analysis, contract debarment or suspension may be the most effective deterrent, since the principal reason for misrepresenting one's status as a disadvantaged small business concern would be to gain access to the preferential procurement practices accorded to such a firm under various provisions of the Small Business Act and other statutes, such as Section 1207 of Public Law 99-661. Aggressive use of the administrative debarment and suspension authority provided by the FAR upon a finding of such fraudulent misrepresentations of status is encouraged.

Section 504—Report of Consultants

The Governmental Affairs Committee hearings and investigation of the Wedtech affair revealed, among many other abuses, an obsessive reliance on well-connected lawyers, consultants and lobbyists for both legitimate and illegitimate advocacy of Wedtech's interests within SBA and other agencies of government. The exorbitant fees charged by these influence peddlers played no small part in the eventual financial demise of Wedtech. A reporting requirement might well have prevented this scandal from reaching its eventual proportions by bringing to light an egregious reliance on political manipulation of the program.

S. 1993 as introduced imposed quarterly reporting requirements for program participants of all fees expended for legal or political consultation. The Committee's 1986 survey confirmed the need for such a reporting requirement in that a large percentage of program participants believe the program to be overly politicized. The Committee is concerned about the number of Section 8(a) compa-

nies which have hired paid consultants and lobbyists to pursue their interests before both the executive and legislative branches of government. However, out of concern that quarterly reporting might be burdensome for the majority of program participants who utilize no paid consultants, the Committee amendments provides for reporting annually.

Section 505—Data Collection and Congressional Report

This section is intended to substantially improve SBA's data with respect to Program Participants. At present, the Committee finds that the data available is woefully inadequate. It is inadequate for effective administration of the Program by the Administration or effective oversight of the Administration by the Committee.

These deficiencies in the Administration's record-keeping concerning Program Participants became obvious as the Committee began to formulate its survey of Program graduates. Only the most rudimentary profiles of Program Participants could be developed, without the great expenditures of "touch labor" by too many SBA employees.

This problem was again brought into clear focus during the consideration of this legislation. As previously discussed, one of the most hotly debated provisions of the bill related to the setting of the dollar thresholds above which a contract opportunity would be subject to competition among Program Participants. The House Small Business Committee furnished to this Committee the data which had been compiled for its use by the Administration. Contract awards to Program Participants were assigned among certain broad industry groupings, and then arrayed within four bands so as to present the number of contract award actions, the dollar value of those actions, and the percentages of both that would be subject to competition at the various proposed thresholds. The validity of this data was constantly challenged, and the Committee ultimately sought data from the Office of Federal Procurement Policy (OFPP) on contract awards to Program Participants for several fiscal years. This information was substantially more complete and accurate than SBA's files.

The Committee amendment directs the Administration to develop and implement a systematic data collection process which will measure the benefits to the nation's economy derived from 8(a) firms, including the impact of the program on employment and national income. More detailed reporting on the total sales and employment of each 8(a) firm was deleted by the amendment. The amendment does, however, include a requirement for data collection on the dollar value of 8(a) contracts, including modifications for each fiscal year and the fraction of total sales these contracts represent for all Program Participants, as well as the value of contracts awarded for each four digit standard industrial classification code.

Section 601—Annual Contract Goals; Report; Effective Date

Title VI of the bill establishes ambitious procurement goals for small business and minority-owned small business. The Committee strongly believes that the procuring agencies must aggressively provide new and meaningful contracting opportunities for small

and minority-owned firms. For ease in contract administration, federal agencies are placing greater reliance on larger and consolidated contracts. This trend is making it more difficult for small businesses to successfully bid on contracts. Federal agencies, through the effective use of subcontracting plans and breakout programs, can provide new contract opportunities for small firms. The Committee is convinced that both the taxpayer and the government will win by an increased degree of small business participation in the federal procurement process.

Accordingly, Title VI of the bill establishes a goal of 20 percent for small business prime contract awards for Fiscal Years 1989 through 1993. This goal is increased to 25 percent beginning in Fiscal Year 1994. The following chart breaks down the degree of small business involvement in federal prime contracts for Fiscal Year 1987.

PRIME CONTRACTS TO SMALL AND MINORITY FIRMS—FISCAL YEAR 1987

	Millions of dollars			Percent of dollars to all performers	
	All performers	Total	Small minority firms	Total	Small minority firms
Total Federal:					
Actions over $25,000	[1] [2] 178,515	[1] [2] 26,706	[2] 4,598	14.96	2.58
$25,000 or less [1]	18,761	8,646	[3] 363	46.08	1.93
Total actions [4]	197,276	35,352	4,961	17.92	2.51
Department of Defense:					
Actions over $25,000	[1] 141,359	20,570a	[5] 3,073	14.55	2.17
$25,000 or less	[1] 14,025	6,124a	[3] 244	43.66	1.74
Total actions	[4] 155,384	26,694d	[6] 3,317	17.18	2.13
Total Civilian:					
Actions over $25,000 [5]	37,156	6,136	1,525	16.51	4.10
$25,000 or less [5]	4,736	2,522	119	53.25	2.51
Total actions [4] [5]	41,892	8,658	1,644	20.67	3.92

[1] Federal Procurement Data System Standard Report, Fiscal Year 1987.
[2] Federal Procurement Data Center Special Report 88-308 of April 1, 1988.
[3] Source same as footnote 1, but it should be noted that large minority firms are included. However, according to source footnote 2 for actions over $25,000, dollars going to large minority firms were only 3.94 percent of dollars going to all minority firms in FY 1987.
[4] By addition.
[5] By subtraction.
[6] Department of Defense, Office of Small and Disadvantaged Business Utilization.

The Committee notes that with a concerted effort the federal small business prime contract awards can be raised from the 17.9 percent level in Fiscal Year 1987 to the 20 percent goal established in this legislation.

With respect to businesses owned by socially and economically disadvantaged individuals, the legislation sets a five percent contract award objective. This five percent goal includes both prime and subcontracting opportunities for minority-owned firms. According to the best available data in Fiscal Year 1987, only 3.1 percent of the federal procurement prime subcontracting awards were performed by minority businesses.

Section 1207 of the Department of Defense Authorization bill for Fiscal Year 1988 set a five percent minority business goal for that agency. Despite problems in implementing the program, the Committee believes the five percent goal to be a commendable one that should be attainable government-wide. The Committee recognizes

the challenges involved in meeting this ambitious objective. This five percent goal should not be achieved by merely shifting contracts previously set aside for small businesses to minority firms. Instead, federal agencies should increase the slice of the federal procurement pie for minority firms. This goal can be achieved through a variety of techniques. The Committee believes one of the most promising approaches would be an aggressive implementation of the subcontracting plans required by Pubic Law 95-507. In Fiscal Year 1987, only $1.5 billion in subcontracts were directed to minority firms out of a total of $63 billion, or 2.4 percent.

Section 602—Presidential Report on Attainment of Participation Goals

Section 60 of the bill requires the Small Business Administration (SBA) to report annually to the Congress on whether these government-wide procurement goals were attained by the federal agencies. The Committee expects SBA to break down the performance of each agency and analyze the reasons why these government or agency objectives were not achieved, if not achieved.

These findings shall be incorporated in the President's "State of Small Business Report" required to be submitted each year to the Congress pursuant to Public Law 96-302. Such a submission will give a greater amount of public attention to the degree of small business and minority business involvement in the federal marketplace.

Section 603—Subcontracting Compliance

Section 603 of S. 1993 as introduced included a provision of the House-passed bill, H.R. 1807, which provided that contracting officers negotiate on all contracts requiring subcontracting plans a provision which requires the prime contractor to pay liquidated damages if he fails to make a good faith effort to meet the subcontracting goals as set forth in the subcontracting plan. Under Section 8(d) of the Small Business Act, all large prime contractors on contracts which exceed $500,000, and in the case of construction $1,000,000, are required to negotiate a subcontracting plan which establishes the maximum practicable amount of subcontracting the prime will do with small and small socially and economically disadvantaged business. Since its enactment in 1978, the subcontracting program has been controversial.

The Committee has heard from small minority-owned businesses that the subcontracting program lacks enforcement. Once the contract is successfully completed, there is no incentive for the procuring agency to monitor whether the requirements set forth in the subcontracting plan have been met. The Committee notes that under federal acquisition regulations contracting officers are authorized to include incentive clauses to encourage prime contractors to increase subcontract awards to small an dsmall disadvantaged businesses. The Committee believes that a liquidated damages provision will help assure that the enforcement of subcontracting plans will be enhanced.

TITLE VII—SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM

Section 711. Small Business Competitiveness Demonstration Program.

This section establishes a Small Business Competitiveness Demonstration Program (hereafter referred to as "the Program"). The Program is authorized as a test program, to be conducted under the authority of Section 15 of the Office of Federal Procurement Policy Act.

Three purposes or objectives of the test program are specified. First, to determine if small business concerns can successfully compete on a unrestricted basis for Federal contracting opportunities. It is uncontroverted that small business concerns have the capability to furnish a broad range of the products and services (including research, development, technical and professional services, and construction) required by all agencies of Government. They have frequently demonstrated that capability by winning approximately 50 percent of their share of Federal procurement dollars in full and open competition with large business. Yet, traditional agency efforts to assure small business participation in a fair proportion of the total Federal procurement market, as required by the Small Business Act, have resulted in a concentration of contract awards in a limited number of industry categories, especially through the use of set-asides.

In many cases, these industry categories are naturally dominated by small firms, and the majority of contracting opportunities in these areas are of the size and scope for which such small firms are likely to be highly competitive. Nonetheless, federal agencies have followed the traditional approach of using set-asides for the purpose of eliminating any uncertainty that the agency will attain its overall small business contracting goals. Given that many agencies are able to fulfill their goals through awards in only a few industry categories, this has permitted continued inattention by management and inadequate efforts to expand small business participation in agency procurements which have historically demonstrated low rates of small business participation, despite adquate numbers of qualified small business concerns in the economy at large. In essence, by taking the "easy hits", the agencies are avoiding making efforts to expand the breadth of small business participation in the federal market.

Concentration of small business awards in certain industry categories, through what critics would describe as excessive use of set-asides, has provided support for those who would challenge the existence of any preferential treatment for small business concerns or disadvantaged small business concerns. For example philosophical opponents of preference, the objections extend beyond assistance within the Federal procurement process to any form of financial or management assistance provided under the authority of the Small Business Act.

The Demonstration Program is designed to determine whether the expanded use of unrestricted competitions for Federal contracts will adversely affect the rate of small business participation. It is premised on the belief that in those industry categories in which

small firms dominate numerically and in which the majority of contracting opportunities comport with the competitive capabilities of the small firms, unrestricted competition will not be detrimental. Small firms should continue to do well in these areas without recourse to set-aside protections.

Given that premise, the Program has been restricted to three designated industry groups (as defined in Section 717): construction (including dredging); refuse systems and related services; and architectural and engineering services (including surveying and maping). All of which meet the market conditions premised.

The Program calls for the use of unrestricted contract solicitation techniques so long as the small business participation rate specified in Section 712 is maintained. If the small business participation rate declines below the specified goal, the agencies are authorized to make vigorous use of set-asides until such time as the goal is once more attained.

At the same time as the participating agencies are conducting the Small Business Competitiveness Demonstration Program, they are required by Section 712(c) to undertake a program to expand small business participation in their contracting opportunites for designated products or services in which small business participation has been historically low, despite the presence of substantial number of small firms in the general economy. This program calls for targeted goaling techniques, intensely managed by the procuring agencies under close SBA supervision.

The Program will be conducted over a four-year period, beginning on January 1, 1989, and ending on December 31, 1992. It is to be directed by the Administrator for Federal Procurement Policy under his authority to test innovative procurement methods and procedures. The Administrator of the Small Business Administration is made responsible for the actual conduct of the test.

Section 712. Small Business Participation Goals

This section requires each agency participating in the Program, as defined in Section 718(b), to make use of a special small business participation goal to be applied to its contracting activity falling within the standard industrial classification (SIC) codes comprised within the three designated industry groups. The special goal prescribed in the provision is 30 percent. This goal represents twice the percentage of small business participation in Fiscal Year 1987 for all Federal contracts with an award value of $25,000 or more (that is, all contracts above the "small purchase" threshold).

The provision requires each participating agency to review its attainment of the goal each six months during the term of the Program. The first review is to be based upon the data for the period January 1, 1989, through March 31, 1989, and is to be completed by June 30, 1989. Thereafter, each six-month review is to be made on the basis of the aggregate contract award data for the four quarters preceding the date of the review, except that the review to be completed by December 31, 1989, will only be based on the three quarters of available data since the beginning of the Program on January 1 through September 30, 1989. The provision also specifies that the participating agencies will count all of their contract awards of $25,000 or more made to any small business concern (in-

cluding disavantaged small business concerns) in determining whether the special goals established for the three designated industry groups are being met.

The section specifies that changes in contracting practices, that is, the reinstitution of set-asides, will be made if the small business participation rate is less than: 30% (based on four quarters of contract award data under the test) or 25% (if only less than four quarters of data under the test Program is available). The provision also specifies that changes to agency contracting practices will be instituted at the beginning on the second fiscal year quarter after a review calling for an adjustment. This will provide the participating agencies adequate time to notify their contracting activities of the actions to be taken.

TARGETING INDUSTRY CATEGORIES WITH LIMITED SMALL BUSINESS PARTICIPATION

Subsection (c) of Section 712 requires each agency participating in the Program to implement a concurrent program to expand small business participation in its contracting opportunities for selected products and services in six industry categories which have historically enjoyed low rates of small business participation. The products or services to be included in the small business participation expansion program mandated by this subsection are to be subject to special goals and intensive management efforts. The targeted procurement opportunities are to be selected by the participating agencies in close coordination with the SBA. Both the selection of the classes of procurement opportunities to be targeted and the special goals to be set are made subject to the procedures for the resolution of disagreements provided under Section 15(g) of the Small Business Act.

Section 713. Procurement Procedures

This section requires the agencies participating in the Small Business Competitiveness Demonstration Program to offer for unrestricted competition all contracting opportunities (above the $25,000 small purchase threshold) for the services provided by firms in the three designated industry groups so long as small business participation does not fall below the specified goal.

Under this program, the tool of small business set-asides will not be used routinely, but will be considered a remedial tool to be used if needed to maintain the 30% small business participation rate. If the goal is not being met, the participating agencies may re-institute set-asides under the authority of Section 15(a) of the Small Business Act with respect to procurements for the various services within the SIC codes which comprise the designated industry groups. The set-asides will be used, to the extent deemed necessary by the participating agency, until the small business participation goal is once again being achieved.

The provision leaves unaffected the various authorities to set aside contracting opportunities, or provide other preferences, for the purpose of assisting disadvantaged small business concerns in the Federal procurement market. Specifically noted are the small disadvantaged business set-asides authorized under Section 8(a) of

the Small Business Act and Section 1207 of Public Law 99-661, the "National Defense Authorization Act for Fiscal Year 1987."

Section 714. Reporting of Subcontracting Activity

This Section requires the Administrator for Federal Procurement Policy to devise and implement a simplified system to test the collection, reporting, and monitoring of data about awards of subcontracts to small business concerns and disadvantaged small business concerns. Subcontracting opportunities represent a very important avenue for participation of small firms in the Federal procurement market. This is especially true as procuring agencies seek to reduce the number of prime contract awards to lessen the administrative burdens associated with both contract solicitation and contract administration in an era of diminishing staffing for support functions. As the number of prime contract awards suitable for small business concerns declines, the focus must shift to subcontract participation. At present, the Federal Procurement Data System (FPDS) has a limited capability to capture data on subcontract awards to small business concerns and disadvantaged small business concerns. The Committee believes efforts must be made to increase that capability. However, the Committee recognizes the paperwork burdens that flow from such an effort must be carefully considered against the benefits to be obtained.

The provision leaves to the Administrator for Federal Procurement Policy the task of shaping this subcontracting data collection element of the Program and determining the scope of participation by any particular participating agency. The Committee recommends that the Administrator include: (1) subcontracts under prime contracts subject to Section 8(d) of the Small Business Act; (2) all subcontracts below the first-tier, but with an award value of $25,000 or more, under a prime contract be subject to a Section 8(d) subcontract plan; and (3) any subcontract award with an award value of $25,000 or more. It is essential that any collection effort identify the SIC code of the subcontractor, so that the resulting reporting system may determine the extent to which the prime contractor or higher-tier subcontractor is subcontracting work directly related to the performance of the prime Federal contract as opposed to acquiring support services or products. To make such an expanded subcontract reporting system workable, it is expected that the program will rely upon a "self-certification" by a subcontractor regarding its status as a small business concern or a disadvantaged small business concern, as well as other information.

Section 715. Test Plan

This section authorizes the Administrator for Federal Procurement Policy to issue a test plan to prescribe additional detail concerning the conduct of the various tests and activities authorized by the "Small Business Competitiveness Demonstration Program Act of 1988." The Committee expects the Administrator for Federal Procurement Policy to coordinate any proposed test plan with the Administrator of the Small Business Administration and as appropriate with the Departmental secretaries or heads of the participating agencies. An opportunity for pubilc comment on the proposed test plan should also be made available.

Section 716. Report to Congress

This section requires the submission of a report by the Administrator for Federal Procurement Policy to the Senate and House Committees on Small Business, the Senate Committee on Governmental Affairs, and the House Committee on Government Operations. The report is to include: (a) the results of the Small Business Competitiveness Demonstration Program; (b) the results of the intensive goaling and management program conducted to expand small business participation in procurements for products or services which historically displayed low small business participation, which is to be prepared by the Administrator of the Small Business Administration; and (c) recommendations (if appropriate) for changes in legislation or modifications to procurement regulations. The provision specifies that a section of the report stating the views of the Administrator of the Small Business Administration regarding the Small Business Competitiveness Demonstration Program is to be included without modification.

The section provides for the submission of the report approximately six months prior to the termination of the test Program. This will provide an opportunity for any Congressional response to the Program prior to termination of the Program. The objective is to avoid unnecessary disruption of the procurement practices of the participating agencies in the event that the plan proves successful and Congress elects to extend the Program.

Section 717. Designated Industry Groups

This section specifies the industry groups designated for participation in the Program. They are: construction (including dredging); refuse systems and related services; and architectural and engineering services (including surveying and mapping). The provision also specifies the standard industrial classification (SIC) codes included in each of the designated industry groups. The various Program requirements shall be undertaken on the basis of contract awards made to the individual SIC codes, including monitoring of contract awards, measuring attainment of small business participation goals, and modifying contract solicitation practices to attain such goals.

The provision permits the Program to be conducted using product and services code data presently available in the Federal Procurement Data System (FPDS) in the event that SIC code data on contract awards is not available from the FPDS by the Program start date, January 1, 1989. Agency reports to the Federal Procurement Data Center for contract actions above the small purchase threshold ($25,000) are scheduled to include SIC code data beginning on October 1, 1988.

Section 718. Definitions

This section establishes a series of definitions applicable to the "Small Business Competitiveness Demonstration Program Act of 1988," including "designated industry groups", "participating agency", "small business participation", and "standard industrial classification code". The definition of "participating agency" set forth in subsection (b) of this section lists the Executive depart-

ments and independent agencies designated to participate in the various test programs. In accordance with the recommendation of the Administrator for Federal Procurement Policy, presented during the Committee April 14, 1988, hearing, the list of participating agencies is centered on the "big eight" agencies, whose procurement activities account for nearly 97 percent of the contract dollars expended by the Federal Government. Additional Departments and agencies were added on the basis that their procurement activities provide a substantial number of contracting opportunities for firms in the designated industry groups. The Environmental Protection Agency, under its largest procurement program, has demonstrated the potential for substantial subcontracting opportunities.

Separate reporting by components of certain departments and agencies is contemplated. For example, individual reporting by each of the Military Services and the Defense Agencies is specified. It would also be appropriate that reporting by the various commands responsible for procuring services provided by firms in the designated industry groups should be included. For example, separate reporting by the Naval Facilities Engineering Command, Army Corps of Engineers (for both military and civil works), and their Air Force counterpart is contemplated. The provision grants to the Administrator for Federal Procurement Policy the discretion to add additional executive departments or agencies to the list of participating agencies, and to tailor reporting requirements to minimize administrative burdens without compromising Program objectives.

PART C—AMENDMENTS TO THE SMALL BUSINESS ACT

Section 721. Small Business Small Purchase Reserve Excluded From Annual Goals

This section amends Section 15(g) of the Small Business Act which requires the various executive departments and agencies to establish annual goals for participation by small business concerns and disadvantaged small business concerns in their contracting opportunities. The provision modifies an amendment made to Section 15(g) of the Small Business Act by Section 921(d) of the FY 1987 DOD Authorization Act.

Under the change made by Section 721 of the bill, procuring agencies would not include "small purchase" awards (procurements of $25,000 or less) in tabulating whether an agency had attained its goals. Under Section 15(j) of the Act, small purchases are already reserved for exclusive competition among small business concerns. Inclusion of these small purchase awards would inflate the apparent performance of the procuring agencies.

Further, changes to the Federal Procurement Data System to provide accurate reporting of small purchase contract awards to small businesses and small disadvantaged businesses will not be instituted until October 1, 1988. It will be several years before reliable historical data will be available to permit meaningful goaling of small purchases.

Section 722. Repealer

This provision repeals the amendments made to Section 3(a) of the Small Business Act by Subsections 921(f) and 921(h) of the FY 1987 DOD Authorization Act, which would require drastic reductions in size standards for certain small business concerns. In the event that regulations implementing the size standard reductions required by Section 921 were to become effective prior to the effective date of the "Small Business Competitiveness Demonstration Program Act of 1988," this provision also preserves the size standards for the Program's designated industry groups, in effect on May 31, 1988, for the duration of the test Program.

PART D—OTHER AMENDMENTS

Section 731. Definition of Architectural and Engineering Services

This section clarifies the definition of "architectural and engineering services". In doing so, it seeks to recognize the realities of current professional practices and offer a more precise definition that will avoid confusion among the Federal agencies in determining when to acquire these professional services in accordance with the requirements of Title IX (Public Buildings—Selection of Architect—Engineers) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.).

V. Section-by-Section Analysis

Section 1. Short Title

This section establishes the bill's citation as the "Minority Business Development Program Reform Act of 1988."

TITLE I—CONGRESSIONAL FINDINGS AND PROGRAM PURPOSES

Section 101. Findings

This section enunciates a series of Congressional findings relating to the Small Business Administration's (SBA's) Minority Small Business and Capital Development Ownership (MSB/COD) Program and the Federal contracting assistance program authorized under Section 8(a) of the Small Business Act. The central Congressional finding is that SBA's minority small business assistance program is a primary catalyst for including small business concerns owned and controlled by socially and economically disadvantaged individuals into the Nation's economic mainstream, but requires significant improvements to attain its full potential. In particular, the MSB/COD Program needs to be restructured to increase the likelihood that participating minority small business concerns are prepared to compete successfully in the unsheltered marketplace after graduation. The Congressional findings also catalog a series of specific management problems that have impeded the attainment of the Program's full potential, including unacceptable delays in the certification process; inequitable distribution of contract opportunities among program participants; general management problems on the part of the Small Business Administration due to the absence of clear lines of authority and responsibility; inadequate support of the 8(a) Program by the federal agencies in terms of the

number, dollar value, and diversity of contracts offered to promote steady sustained growth among the full range of firms participating in the Program; SBA's tendency to allocate contract support and business development expense grants to only a few of the most highly successful firms in the Program; and a perception of improper political influence throughout the Program's operation and administration, deterring broader participation by socially and economically disadvantaged businesses and the federal agencies, and contributing to the Program's generally poor public image.

Section 102. Purposes

This section recites the purposes of the Act. The purposes of the Act are to: (1) ensure that the benefits of the MSB/COD Program and the 8(a) Program accrue to small business concerns owned and controlled by individuals who are both socially and economically disadvantaged; (2) reaffirm the business development objectives of the program to ensure that participating firms are better prepared to compete in the unsheltered marketplace after graduation; (3) increase the number of minority-owned businesses capable of furnishing products and services to the United States Government; and (4) ensure integrity, competence and efficiency in the administration of both business development services and the management and distribution of Federal contracting opportunities to eligible small businesses under the Program.

TITLE II—PROGRAM ORGANIZATION, ELIGIBILITY, AND PARTICIPATION

Section 201. Office of Minority Small Business Certification

This section establishes a separate Division of Minority Small Business Certification within the SBA's Office of Minority Small Business and Capital Ownership Development. An office of the Division is also established in each of the SBA Regional Offices to facilitate the timely exercise of the Divsion's responsibilities and functions. The responsibilities and functions of these regional offices of the Division would be to: (1) review applications for certification as Program Participants, notifying each applicant within 15 days whether its application is complete and suitable for evaluation or specifying deficiencies making such application unsuitable for evaluation; (2) evaluate applications and make recommendations regarding certification to the Division director, for the Associate Administrator for Minority Small Business and Capital Ownership Development who approves or denies Program certification, subject to appeal; (3) review the continued eligibility of current Program Participants periodically and whenever a Program Participant initiates any change in ownership interest or other change which could impair contined Program eligibility; (4) initiate through the Division director requests for the commencement of a termination proceeding, whenever appropriate; and (5) decide protests, subject to appeal, regarding a Program Participant's continued eligibility as a business concern owned and controlled by socially and economically disadvantaged individuals.

Section 202. Eligibility and Certification

This section establishes eight years as the Maximum Program Participation Term for participants in the Minority Small Business Development and Capital Onwership Development Program authorized by Section 7(j)(10) of the Small Business Act and the supporting contracting program authorized by Section 8(a) of the Act. It reaffirms the authority of the Associate Administrator for Minority Small Business and Capital Ownership Development as the official empowered to make the final administrative decision concerning the issuance of a certificate of Program eligibility. It establishes a 90-day period from the receipt of a complete application, suitable for evaluation, during which the SBA must approve such application and issue a Program Participation Certificate or deny such application. The section specifically prohibits denial of a Program application solely on the basis of a determination by the SBA that adequate numbers of noncompetitive contract opportunities are not likely to be available to support the business development of the applicant during its Program Participation Term. If an application is denied, the SBA is required to notify the applicant in writing specifying the reasons for the denial and advising the applicant of its right to appeal to the SBA Office of Hearings and Appeals. An applicant is barred from filing a new application for Program Participation for one year following any denial of an application.

The section also prescribes transition rules for current participants in the MSB/COD Program, eligible for award of contracts under the 8(a) Program. Such "grandfathered" firms include those which are Program Participants on June 1, 1988, or the date of enactment, whichever is earlier. The Program Participation Term for such Program Participants shall be the greater of: (1) eight years less the number of years since the award of such firm's first contract under the authority of the Section 8(a) Program; or (2) the unexpired portion of the firm's currently specified Fixed Program Participation Term (FPPT). The section specifically notes that this "grandfathered" provision does not create any program eligibility for a firm that has: (1) graduated from the Program prior to June 1; (2) been terminated from the Program; or (3) otherwise been deemed ineligible to receive assistance under the MSB/COD Program or for a contract award under the 8(a) Program (due, for example, to a suspension or debarment from Government contracts).

The section also adds an ownership test to Section 8(a) of the Act. It requires that 51 percent interest in the firm must be unconditionally owned by one or more socially and economically disadvantaged individuals.

The section also addresses the issue of the personal net worth of a socially disadvantaged individual for the purpose of determining if such individual is also "economically disadvantaged". It requires the SBA to establish one or more thresholds of personal net worth for purposes of determining eligibility of such individual for admittance into the Program and for continued participation. The net worth calculation excludes the sums which the individual has invested in the firm. A Program applicant or a Program Participant found to have a personal net worth in excess of the applicable

threshold is presumed to be other than "economically disadvantaged", but may demonstrate an actual status to the contrary.

Section 203. Graduation Standards

This section sets forth conditions for the graduation of Program Participants. Four events are specified which would trigger graduation: (1) expiration of the firm's Program Participation Term; (2) exceeding all size standards applicable to the firm; (3) a decision by the Program Participant to voluntarily leave the Program; and (4) a determination that the firm is no longer owned and controlled by economically disadvantaged individuals. The section explicitly states that exiting the Program through any of the events that trigger a graduation should be recognized as successful completion of the Program.

Section 204. Termination

This section sets forth conditions for termination of Program Participants. The provision specifies a series of events, which would constitute "good cause", as follows: (1) transfer of ownership and control of the business to other than socially and economically disadvantaged individuals; (2) consistent pattern of delinquent performance or a termination for default on Section 8(a) contracts; (3) consistent pattern of delinquency regarding required submissions or responses to the SBA; (4) debarment of the Program Participant pursuant to the Federal Acquisition Regulation; (5) willful violation of rules and regulations established by SBA; and (6) conviction of any of the firm's owners and officers for various offenses under Federal or state law which indicate a lack of business integrity.

The section also prescribes the timing for various events relating to a termination proceeding. The Associate Administrator for Minority Small Business and Capital Ownership Development is authorized to initiate a termination proceeding within 15 days after receiving a recommendation to terminate from the Director of the Division of Minority Business Certification. The regional directors of the Division will generally recommend the initiation of termination proceedings to the Director. A Program Participant shall be provided a written notice of intent to terminate, specifying the reasons for such action. The Program Participant is entitled to a hearing on the record, which shall commence within 60 days of the notice of intent to terminate, unless the hearing is waived in writing by the Program Participant.

Section 205. Challenging Eligibility

This section requires the SBA to evaluate a Program Participant's current eligibility for continued participation upon receiving specific and credible information that the concern is not eligible to participate in the MSB/COD and 8(a) programs. It prohibits the suspension of the firm from continued participation in the Program until a termination proceeding is actually initiated. The section also establishes an expedited eligibility protest procedure to be used in conjunction with an on-going procurement. Under this protest procedure a contracting officer or other interested parties may challenge the eligibility of a Program Participant as a concern owned and controlled by socially and economically disadvantaged

individuals. Protests regarding the size of a Program Participant would be decided in accordance with existing size protest procedures. Similarly, this protest mechanism would not be available to challenge other aspects of the solicitation process, such as bias in the specifications. To be timely, such protests would have to be filed within 5 days the identity of the apparent successful offeror is known.

These protests would be filed with the SBA regional office in which the challenged Program Participant has its principal place of business. The firm is entitled to receive notice of the protest and to submit information supporting its continued eligibility within 5 days of the date of receiving the notice of protest. A protest deemed to be frivolous may be dismissed summarily. A decision regarding the eligibility of the challenged Program Participant is to be issued by the regional director of the Division of Minority Business Certification within 15 days after receipt of the initial protest. The procurement action is to be suspended until the issuance of the regional director's decision. Within five days of receiving the regional director's decision, the challenged Program Participant may file an appeal with the SBA's Office of Hearings and Appeals. During the pendency of this appeal, the procurement action need not be suspended.

Section 207. Provisions for Tribally Owned Enterprises

This section permits the SBA to certify a small business concern owned by a socially and economically disadvantaged Indian tribe to be eligible more than once as a Program Participant, if: (1) the Indian tribe does not concurrently own another Program Participant in the same industry; and (2) the individuals responsible for the management of such Program Participant concurrently manage no more than one other Program Participant owned by the same tribe.

TITLE III—ENHANCING PROGRAM'S BUSINESS DEVELOPMENT ASPECTS

Section 301. Business Plans

This section requires a Program Participant to develop a comprehensive business plan designed to chart the firm's development so that it will be a viable business concern capable of effectively competing in the unsheltered marketplace upon graduation. The SBA is authorized to provide assistance to Program Participants in the development of such plans through public or private organizations. The business plan required by this section is to be submitted promptly after certification and before a firm could be eligible to receive additional management assistance or any contract assistance under the Program.

Certain elements of the required business plan are specified, including: analyses of the Program Participant's market potential during participation in the Program and upon graduation; the firm's strengths and weaknesses relating to various resources and management; specific business development objectives and goals, including estimates of the dollar amount of contracts and amounts of bid and proposal cost reimbursements necessary to assist the firm to meet its objectives. The provision requires a Program Par-

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ticipant to revise and update its business plan at least annually. The level of noncompetitive 8(a) contract support established in the plan must be consistent with the business mix requirements (percentages of competitive contract awards and noncompetitive 8(a) contract awards) established by section 401 (Development of Business Mix Emphasizing Competitive Contract Awards) of the bill.

This section also requires that the revision of the Program Participant's business plan pertaining to the fifth year of its Program Participation Term include a transition management plan outlining specific steps to assure profitable business operations after graduation. Such transition management plans are likely to contribute significantly to the likelihood of the Program Participant's success upon graduation.

Section 302. Competitive Bid and Proposal Cost Program

This section authorizes the SBA to make available to Program Participants financial assistance to help defray the costs of competing for government and commercial contracts. Grants would be made on the basis of applications to reimburse the Program Participant for direct and indirect costs incurred. All Program Participants would be eligible for assistance during the first five years of their Program Participation Term. From the sixth and succeeding years, a firm could receive bid and proposal cost assistance only if the firm had failed to achieve its business mix requirements. An eligible Program Participant would negotiate the total amount of bid and proposal costs it could receive in the subsequent year, up to a maximum amount of $100,000, as part of the annual review of its business plan. The firm would be ineligible to receive reimbursement for bid and proposal costs already reimbursed by the Government through other means.

The provision also permits a Program Participant to seek reimbursement for full amount of all allowable bid and proposal costs under negotiated agreements with individual departments and agencies without regard to limitations applicable under regulatory formula used by the procuring agency. This provisions seeks to address the limitation of regulatory ceilings on allowable costs. The allocability and basic allowability of the underlying costs must meet regulatory requirements.

Section 695(b) provides an authorization of $5 million each of the fiscal years 1989, 1990, and 1991.

Section 303. Management Assistance

This section adds two new subparagraphs to section 7(j)(10) designed to expand the management assistance components of the Minority Small Business and Capital Ownership Development Program. One provision focuses on training programs, to be delivered at the regional level, to improve the capabilities of Program Participants in competing for Federal contracts and performing them after they have been won. In particular, these training programs are expected to focus on the contract administration requirements unique to Federal contracts, such as first article approvals prior to production, quality assurance, progress payments based on incurred costs, and performance of Government directed changes in contract requirements without agreement on adjustments in price.

The other provision focuses on providing training to Program Participants, through public or private organizations or individuals, in developing business plans that will enhance the firms' abilities to operate successfully after Program graduation.

Section 304. Minority Business Direct Loan Program

This section creates a direct loan program for Program Participants to help finance fixed assets and working capital needs of the firms. This program would replace business development expense (BDE) grants, which is eliminated by section 605(d) of the bill. The program is to be administered by the Finance and Investment Division within SBA's Office of Finance and Investment. The interest rate on these loans is specified at two percentage points below the rate established for the direct loan program for economic opportunity loans (EOL) currently authorized by section 7(a)(11) of the Act.

Section 605(c) of the bill authorizes $10 million for each fiscal years 1989, 1990, and 1991.

TITLE IV—BUSINESS DEVELOPMENT THROUGH FEDERAL CONTRACTING OPPORTUNITIES

Section 401. Development of Business Mix and Emphasizing Competitive Contract Awards

This section establishes benchmarks for competitive business activity which a Program Participant must attain during the fifth and subsequent Program years in order to remain eligible for the award of non-competitive contracts under the 8(a) program. The provision encourages a Program Participant to gradually diminish its dependence on non-competitive business activity as it approaches graduation. The maximum percentages of the Program Participant's new sales derived from the award of non-competitive 8(a) contract awards may not exceed:

70 percent at the end of its Fifth Program Year;
50 percent at the end of its Seventh Program Year; and
25 percent at the end of final year.

The determination of whether a Program Participant has attained its business mix is to be made may at the conclusion of the Program years specified on the basis of new sales made during that year. New sales are actual revenues received) (or accounts receivable) from contracts awarded during that Program year. The provision permits a Program Participant who has failed to attain its required business mix at the close of its fifth Program Year to attain compliance during the subsequent year. A Program Participant's failure to attain its business mix requirement only precludes the firm from being eligible for additional noncompetitive contract awards. Alone, it does not constitute grounds for initiating a termination proceeding.

The Administrator of the Small Business Administration may waive the requirements in individual cases upon finding that: (a) the Program Participant's non-competitive awards received under the authority of Section 8(a) exceeded the specified percentages by no more than 5 percent; (b) the Program Participant has demonstrated a reasonable expectation of receiving adequate competitive awards to bring it into compliance; and (c) the denial of additional

noncompetitive 8(a) contracts would cause severe economic harm, jeopardizing the firm's future ability to meet subsequent business mix requirements. The provision specifies that the business mix requirements of this section would be treated only as goals for any firm "grandfathered" into the Program with five or fewer years remaining on its Program Participation Term, under the amendments to the Act made by the provisions of Section 202 (Eligibility and Certification). It is intended that the Administration will assess whether the Program Participant's reasonable effort to attain the specified mix of competitive and non-competitive contract awards has been made in "good faith".

Section 402. Planning 8(a) Program Contract Activity

This section amends the Act by adding two new subparagraphs regarding the forecasting of Section 8(a) contracting opportunities by Federal agencies. The new paragraph 8(a)(16) would require each executive agency that reported over $50 million in procurements annually to prepare a forecast of contract opportunities for the next and succeeding fiscal years that it considers suitable for small business concerns, including disadvantaged small business concerns. The section enumerates the information to be included in the forecast, to the extent such information is available, and mandates appropriate updates during the fiscal year. The provision requires the submission of the forecast to the director of the Office of small and disadvantaged business utilization for the agency preparing the forecast and to the SBA, within 10 days of its completion. The provision also requires that the forecasts by been available to small business concerns.

The section also requires that Program Participants forecast their needs for contract award made pursuant to the authority Section 8(a) for the nmext two Program Years as part of the annual review and revision of its business plan. The contents of the Program Participant's forecast are specified in the provision.

Section 403. Contract Awards

This section provides the Small Business Adminstration with specific guidance on the award of contracts under the authority of Section 8(a). The provision directs the award of a non-competitive 8(a) contract of the Program Participant recommended by the procuring agency offering the contract opportunity if: (a) the Program Participant is determined to be capable of performing the contract by the SBA; (b) the proposed award is determined by the SBA to be consistent with the Program Participant's business plan; and (c) a determination has been made (on the basis of the Program Participant's self-certification, or otherwise) that the Program Participant is in compliance with any business mix requirement or goal. This provision states a statutory recognition for "self-marketing" by Program Participants in the pursuit of contract opportunities eligible for non-competitive award under the Program. The provision reserves the Administrator's authority to direct a "self-marketed" contract opportunity to another firm to achieve a more equitable distribution among firms in the SBA's various regions and to permit awards to individual Program Participants. It is expected that this authority would be used sparingly. Its application to indi-

vidual Program Participants should be limited to providing minimal sustaining contract support essential to maintain a firm's continued participation in the Program. The Administration is accorded no discretion with respect to diverting a competitive award made under the authority of Section 8(a).

The section designates the head of the MSB/COD program for the SBA region in which the agency offering the contracting opportunity as the official authorized to select the Program Participant for the award of the "subcontract", the source selection official. The actual subcontract award will be made by other Administration employees appropriately warranted to make contract awards. If he contracting oportunity is a "national buy", the source selection official shall be designated by the Administrator.

The section would require the competition among Program Participants of any contract opportunity with an anticipated award price, including any options, exceeding $5 million, if there is a reasonable expectation that two Program Participants will submit offers and award can be made at a fair market price. The competition would be conducted by the procuring agency. The section also authorizes the Associate Administrator MSB/COD to permit an agency to conduct a competition for a contracting opportunity which is below the $5 million threshold.

The section specifically recognizes that protests arising out of the solicitation and award of a contract opportunity restricted to eligible Pogram Participants shall be eligible for resolution within the various forums provided by statute or regulation to hear and decide bid protests. Protests regarding the Program Participant's eligibility to participate in the Program are specifically excluded.

The section also provides authority to solicit on an unrestricted basis a contracting opportunity, currently eligible only for Program Participants, if requested by the incumbent contractor, who will have graduated from the Program prior to the next solicitation, and approved by the agency head making the contracting opportunity available. This provision will further assist recent Program graduates to remain viable.

Section 404. Contract Performance

This section specifies the extent to which a Program Participant which has been awarded an 8(a) contract may transfer the benefits of that contract to another firm. The provision sets forth the general rule that a Program Participant awarded a contract under Section 8(a), on a competitive or non-competitive basis, shall complete the performance of the contract even though the period of contract performance extends beyond the firm's Program Participation Term. The requirement extends to any contract options exercised, or contract modifications made, by the Government while the firm is still in the Program. In those situations wherein the Program Participant has been terminated for cause or has failed to meet its "business mix" requirements, the contracting officer is admonished to limit contract modifications to those essential to attaining contract performance and to avoid the exercise of contract options unless the procuring agency's program activity or mission would be negatively impacted.

To restrict the transfer of 8(a) contracts to firms outside the Program, the section requires that an 8(a) contract be terminated if the Program Participant transfers the contract to another firm during the initial year of performance, unless the requirements of certain exceptions are met. The SBA Administrator may grant prior written approval, if: (a) the proposed transferee is currently a Program Participant, eligible to receive the contract award directly; or (b) the individual upon whom Program eligibility is based is no longer able to exercise control of the firm due to incapacity or death. The provision also permits the Administrator to waive the termination requirement upon the request of the procuring agency, if the head of such agency certifies that the termination of the contract would severely impair the agency program objectives or missions.

No termination of the 8(a) contract is required if the transfer takes place during the performance of an option or a contract modification. However, further exercise of options would be limited, while contract modifications, within the scope of the contract, could be completed without limitation. Any contract termination pursuant to this provision would be deemed to be a "termination for the convenience of the Government", which would not expose the defaulted contractor to the costs incurred by the Government to obtain a replacement contractor.

Section 405. Appeal of Agency Decision Regarding 8(a) Contract Opportunities

This section specifies the authority of the SBA Administrator to appeal a contracting officer's decision not to offer a contracting opportunity for award under the Program. Under existing law, the Adminstrator may appeal such a decision to the Departmental Secretary or the agency head; regulations establish the allowable time for the SBA appeal and the agency decision on such an appeal. This amendment codifies the times specifed in the regulations, namely five days for SBA to file its appeal and 15 days for the agency response to the SBA appeal. During the pendancy of the agency's consideration of SBA's appeal, the procurement action giving rise to the appeal is suspended, as it is under the existing regulations.

TITLE V—IMPROVED PROGRAM MANAGEMENT AND CONGRESSIONAL OVERSIGHT

Section 501. Associate Administrator for Minority Small Business and Capital Ownership Development

This section changes the law to require that the Associate Administrator for Minority Small Business and Capital Ownership Development be a career civil service appointee rather than a political appointee.

This section also provides that SBA shall assign to each district office which has 8(a) certified firms an adequate number of Business Opportunity Specialists to assure that the program duties can be responsibly performed. It also requires that SBA take appropriate steps to assure that BOS's receive adequate training to perform their jobs of assisting each Program Participant.

Section 502. Prohibited Actions and Employee Responsibilities

This section establishes prohibitions on the activities of SBA employees for up to one year after their employment at SBA terminates. Any covered employee who personnally and substantially participates in decisions relating to a Program Participant is prohibited from: (1) buying, selling or receiving (except by inheritance) any legal or beneficial ownership interest in an 8(a) firm; (2) entering into any agreement to receive any interest in an 8(a) firm or (3) receiving any other benefit right incident to ownership of a firm. Any current or former SBA employee who violates the prohibitions specified in this section shall be subject to the Program Fraud Civil Remedies Act of 1986. Civil penalties under the Act are limited to 200 percent of the gain from any transaction. These sanctions shall be in addition to any other disciplinary actions or penalties prescribed by law.

The section also expressly prohibits any SBA employee, having authority to make decisions related to program participants, from considering the political affiliation or political activity of any Program applicant or Program Participant. Employees shall report to the SBA Inspector General any solicitations or directions to consider political affiliations.

Section 503. False Representations

This section amends Section 16 of the Small Business Act, regarding false statements, to require that any person who misrepresents his or her status as a small business concern or a small business concern owned and controlled by a socially and economically disadvantaged person in order to obtain (1) a small business setaside contract or small business innovation research award, (2) an 8(a) contract, (3) a subcontract pursuant to Section 8(d) of the Small Business Act or (4) any other small disadvantaged business award shall be subject to: (a) fine of $100,000 or imprisonment up to 5 years; (b) administrative sanctions under the Program Fraud Civil Remedies Act; (c) suspension or debarment from federal contracting or (d) suspension for 3 years from participation in procurement programs authorized by the Small Business Act. Also, an 8(a) firm which falsely certified its compliance with the business mix requirements under this Act is subject to all of the sanctions enumerated under this section.

Section 504. Report by Program Participants

This section requires all 8(a) firms to annually report the names of any agents, representatives, attorneys, consultants, who are paid by the firm, but are not employees, and the work performed and the amount paid to each person. The BOS will promptly forward these reports to the Associated Adminstrator for Minority Small Business and Capital Ownership and Development.

Section 505. Data Collection and Congressional Report

This section establishes a Task Force on Small Business Development which shall collect data, assess the development cycles, and recommend solutions to the problems faced by minority small businesses. The Task Force shall have 15 members who are actively in-

volved in working with small business from both the private sector and the government. The Task Force should compile information by industry categories which might be the basis for setting appropriate program terms for the 8(a) program. The Task Force shall submit its written report to the House and Senate Small Business Committees no later than April 15, 1990.

The section also directs the Administrator of SBA to establish a data collection system which demonstrates the benefits of this program to the economy. It further requires beginning on April 30, 1989, and each year thereafter, the SBA to submit to the Congressional Small Business Committees information on the MSB/COD program which includes: (1) the total amount of competitive and non-competitive awards made to each program participant under the program and the percentages of each participants total sales, by year of participation in the program; (2) the dollar value of all contracts awarded under the program by four digit standard industralization code and (3) any other information the Administration deems appropriate.

Section 506. Definitions

This section includes Native Hawaiian community service organizations under the definition of an Indian tribe for purposes of the 8(a) program.

TITLE VI—ANNUAL CONTRACT PARTICIPATION GOALS; REPORT; AUTHORIZATIONS

Section 601. Annual Contracting Goals

This section requires the President to establish annual procurement goals for prime contracting with small businesses at 20 percent and for prime and subcontracting with small disadvantaged businesses at 5 percent for each year for fiscal years 1989 to 1993. In fiscal year 1994 and each year thereafter the goal for small businesses would be set at 25 percent and the goal for small disadvantaged businesses would be set at 10 percent beginning in fiscal year 1998 and every year thereafter. Further, the section provides that the goals and achievements for small business should not include the awards made to small disadvantaged businesses.

Section 602. Presidential Report on the Attainment of Participation Goals

This section provides that annually the Small Business Administration should compile and analyze the reports submitted by procuring agencies on their attainment of goals established by Section 601 of this bill and submit a report to the President on each agency's goal and attainment and planned corrective actions to meet the goal, if goals are not met. Of the awards made, the report should include the method of procurement and the number and dollar amount to small and small disadvantaged businesses. This information shall be submitted to the Congress as a part of the President's report on the state of small business as required by Public Law 96-302.

Section 603. Subcontracting Program Compliance

This section amends the Small Business Act to require that large federal prime contracts which contain subcontracting goals for small and small disadvantaged businesses, as required by Public Law 95–507, include a provision for payment of liquidated damages in the event that the prime contractor fails to make a good faith effort to meet the goals. The contracting agency is also directed to ensure that the prime contractor does not establish unrealistically low goals.

Section 604. Relationship With Other Procurement Programs

This section directs each agency covered by the Department of Defense Authorization, Section 1207 program, (5 percent goal for contracting with socially and economically disadvantaged firms) to implement the program in such a way that there will be no reduction in the number or dollar amount of awards going to small businesses nor interfere with the Section 8(a) program.

Section 605. Authorization of Appropriations

This section authorizes the appropriation of $3.5 million to hire 70 additional people for the MSB/COD program. It also authorizes appropriations of $5 million for each fiscal year 1989–1991 for the Bid and Proposal Fund under Section 302 of the bill and $10 million for each fiscal year for fiscal years 1989–1990 for the Direct Loan Program established under Section 304 of the bill. The section also eliminates funding for Business Development Expense.

TITLE VII—SMALL BUSINESS COMPETITIVENESS DEMONSTRATION PROGRAM

PART A—SHORT TITLE AND FINDINGS

Section 701. Short Title

This section establishes the citation of Title VII as the "Small Business Competitiveness Demonstration Program Act of 1988."

Section 702. Findings

This section enunciates a series of Congressional findings relating to the participation of small business concerns in the Federal procurement process. It recognizes that small business concerns have repeatedly demonstrated their ability to provide through effective contract performance a broad range of the products and services (including research, development, technical and professional services, and construction) required by all agencies of Government. The central Congressional finding is that traditional agency efforts to assure small business participation in a fair proportion of Federal procurements, as required by the Small Business Act, have resulted in a concentration of contract awards in a limited number of industry categories, naturally dominated by small business concerns, through the use of set-asides. While this has helped assure attainment of the agency's overall small business contracting goals, it also resulted in inadequate efforts to expand small business participation in agency procurements which have historically demonstrated low rates of small business participation, but for which

there is substantial potential for expanded small business participation.

PART B—DEMONSTRATION PROGRAM

Section 711. Small Business Competitiveness Demonstration Program

This section establishes a Small Business Competitiveness Demonstration Program (hereafter referred to as "the Program"), to be conducted under the direction of the Administrator for Federal Procurement Policy under his authority to test innovative procurement methods and procedures. The Administrator of the Small Business Administration is made responsible for the actual conduct of the test.

The provision specifies the purposes of the Program, which are to determine: (1) how well small business concerns do in unrestricted competitions for contracting opportunities in industry categories in which a full range of small firms predominate; (2) whether targeted goaling techniques, intensely managed by the procuring agencies under close SBA supervision, can expand small business participation in contracting opportunities for products or services in which small business participation has been historically low, despite the presence of substantial numbers of small firms in the general economy; and (3) whether the expanded use of full and open competition will adversely affect small business participation in designated industry categories. The Program will be conducted over a four-year period, beginning on January 1, 1989, and ending on December 31, 1992. The Program is a pilot test program only applicable to the following three designated industry groups (as defined in Section 717): construction (including dredging); refuse systems and related services; and architectural and engineering services (including surveying and mapping).

Section 712. Small Business Participation Goals

This section requires each participating agency, as defined in Section 718(b), to establish a special small business participation goal to be applied to its contracting activity falling within the three designated industry groups. The special goal prescribed in the provision is 30%, which represents twice the percentage of small business participation Fiscal Year 1987, for all Federal contracts with an award value of $25,000 or more (that is, above the "small purchase" threshold).

The participating agencies are required to review the attainment of the goals every six months during the term of the test program. The first review is to be based upon the data for the period January 1 through March 31, 1989, and is to be completed by June 30, 1989. Subsequent reviews shall be made on the basis of the aggregate contract award data for the four quarters preceeding the date of the review, except that the review to be completed by December 31, 1989, will only be based on the three quarters of available data since the beginning of the Program on January 1, through September 30, 1989. The provision also specifies that the agencies participating in the test Program will count all of their contract awards of $25,000 or more made to any small business concern (including

disadvantaged small business concerns) in determining whether the special goals established for the three designated industry group are being met.

The section specifies that small business set-asides will be reinstituted if the small business participation rate is less than 30% (based on four quarters of contract award data under the test) or 25% (if only partial data under the test is available). The provision also specifies when the participating agencies will make the changes to their contracting practices.

Subsection (c) of Section 712 requires the participating agencies to implement a concurrent program to expand small business participation in their procurements for selected products and services from six industry categories which have historically low rates of small business participation. The products or services to be included in the small business participation expansion program called for in this subsection are to be subject to special goals and intensive management efforts. The targed procurement opportunities are to be selected by the participating agencies in close coordination with the SBA.

Section 713. Procurement Procedures

This section requires the agencies participating in the Small Business Competitiveness Demonstration Program to offer contracting opportunities (above the $25,000 small purchase threshold) in the three designated industry groups on an unrestricted basis so long as small business participation does not fall below the specified goal. Essentially, the remedial tool of small business set-asides will not be routinely used unless needed to maintain the 30% small business participation rate. If the goal is not being met, the participating agencies may institute set-asides under the authority of Section 15(a) of the Small Business Act with respect to procurements for the various services which comprise the designated industry groups. The set-asides will be used, to the extent deemed necessary by the participating agency, until the small business participation goal is once again being attained. The provision specifically preserves unchanged the various authorities to set aside contracting opportunities to assist disadvantaged small business concerns, including Section 8(a) of the Small Business Act and Section 1207 of Public Law 99-661, the "National Defense Authorization Act for Fiscal Year 1987."

Section 714. Reporting of Subcontracting Activity

This Section requires the Administrator for Federal Procurement Policy to devise and implement a simplified system to test the collection, reporting, and monitoring of data about awards of subcontracts to small business concerns and disadvantaged small business concerns. The provision outlines the scope of the reporting system to be devised and tested.

Section 715. Test Plan

This section authorizes the Administrator for Federal Procrurment Policy to issue a test plan which provide additional guidance concerning the conduct of the various tests activities authorized by

the "Small Business Competitiveness Demonstration Program Act of 1988."

Section 716. Report to Congress

This section requires the submission of a report to the Senate and House Committees on Small Business, the Senate Committee on Governmental Affairs, and the House Committee on Government Operations. The report is to include: (a) the results of the Small Business Competitiveness Demonstration Program; (b) the results of the intensive goaling and management program conducted to expand small business participation in procurements for products or services which hsitorically displayed low small business participation; and (c) recommendations, if appropriate, for changes in legislation or modifications to procurement regulations.

Section 717. Designated Industry Groups

This section specifies the following industry groups are designated for participation in the Program: construction (including dredging); refuse systems and related services; and architectural and engineering services (including surveying and mapping). The provision goes on to specify the standard industrial classification (SIC) codes included in each of the designated industry groups. The requirements of the Program, including monitoring of contract awards, measuring attainment of small business participation goals, and modifications to contract solicitation practices to attain such goals, shall be undertaken on the basis of these indiviual SIC codes. The provision permits the Program to be conducted using existing product and services code data in the Federal Procurement Data System (FDPDS), in the event that SIC code data on contract awards is not available from the FPDS by the Program start date.

Section 718. Definitions

This section establishes a series of definitions applicable to the "Small Business Competitiveness Demonstration Program Act of 1988," including "designated industry groups," participating agency," "small business participation," and "standard industrial classification code."

PART C—AMENDMENTS TO THE SMALL BUSINESS ACT

Section 721. Small Business Small Purchase Reserve Excluded From Annual Goals

This provision amends Section 15(g) of the Small Business Act relating to establishing annual goals for participation by small business concerns and disadvantaged small business concerns. Under this amendment, procuring agenices would not include "small purchase" awards (procurements of $25,000 or less). Under Section 15(j) of the Act, small purchases are reserved for exclusive competition among small business concerns. The Small Business Act by Section 921(d) of the FY 1987 DOD Authorization Act.

Section 722. Repealer

This provision repeals the amendments made to Section 3(a) of the Small Business Act by Subsections 921(f) and 921(h) of the FY

1987 DOD Authorization Act, which would require drastic reductions in size standards for certain small business concerns. The provision also preserves the size standards for the Program's designated industry groups, in effect on May 31, 1988, for the duration of the test Program.

PART D—OTHER AMENDMENTS

Section 731. Definition of Architectural and Engineering Services

This section specifies a clarified definition of "architectural and engineering services".

Section 732. Effective Date

This section specifies the date of enactment as the effective date for the "Small Business Competitiveness Demonstration Program Act of 1988."

TITLE VIII—EFFECTIVE DATES

Section 801. Effective Dates

This section specifies the effective dates for the various provisions of the "Minority Business Development Program Reform Act of 1988," except for Title VII.

VI. Matters Required To Be Discussed Under Senate Rules

A. COMMITTEE CONSIDERATION

The Committee met on May 17, 1988, to consider S. 1993, H.R. 1807 and an original bill to authorize appropriations for the Small Business Administration. With a quorum present, the Committee voted unanimously to order S. 1993, as amended, favorably reported and to order H.R. 187 reported without recommendation. Amendments by Senators Dixon, Boren, Levin, Kerry and Mikulski were considered and disposed of by voice vote as earlier discussed.

B. EVALUATION OF REGULATORY AND PAPERWORK IMPACT

Pursuant to the requirements of paragraph 11(b) of Rule XXXVI of the Standing Rules of the Senate, the Committee has considered the regulatory and paperwork impact of S. 1993. It has also considered the bill's impact on the privacy of individuals or firms doing business with the Federal government.

The Committee has considered the additional regulatory burden which S. 1993 imposes on small businesses doing business with the government and concludes that the bill will have relatively little impact in light of the substantial benefits to government and to contractors which will result from the significant reforms in the 8(a) program contained in the bill. Firms in the program may have to keep some additional records of the source of their business in order to satisfy the business mix requirements in the latter years of program participation. Also the bill requires disclosure annually of fees paid to lobbyists and consultants by 8(a) firms. In the opinion of the Committee, these burdens are insignificant and necessary to achieve the significant public purposes of improving the program for 8(a) firms and preventing further abuse.

C. COST OF THE LEGISLATION

In compliance with Rule XXVI of the Standing Rules of the Senate, the Committee estimates that the cost of the legislation will be equal to the amounts indicated by the Congressional Budget Office in the following letter:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 22, 1988.

Hon. DALE BUMPERS,
Chairman, Committee on Small Business,
U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the attached cost estimate for S. 1993, the Minority Business Development Program Reform Act of 1988.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

JAMES L. BLUM,
Acting Director.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

1. Bill number: S. 1993.
2. Bill title: Minority Business Development Program Reform Act of 1988.
3. Bill status: As ordered reported by the Senate Committee on Small Business, May 17, 1988.
4. Bill purpose: S. 1993 would make a number of changes to the Small Business Administration's (SBA) Section 7(j) and 8(a) programs. The bill would establish an eight-year maximum term for Section 8(a) program participants and would require competition for most contracts over $5 million. In addition, the bill would authorize appropriations for hiring 70 additional personnel to carry out specific provisions of the bill, and would make available financial assistance to program participants to help defray the costs of preparing an offer or bid for a contract. The SBA would be required to establish a program to train Section 8(a) participants in the techniques for obtaining and performing federal contracts. The bill also would increase data collection and reporting requirements by SBA, establish a small business competitiveness demonstration program, and require SBA to train, periodically, business opportunity specialists. Lastly, S. 1993 would eliminate funding for the business development expense (BDE) program, but would permit SBA to make low-interest loans directly to participants for the purchase of certain items and for working capital.
5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1989	1990	1991	1992	1993
New authorizations:					
Estimated authorization level	21	17	17	2	2
Estimated outlays	11	17	17	6	2

[By fiscal year, in millions of dollars]

	1989	1990	1991	1992	1993
Eliminate BDE:					
Estimated authorization	−18	−18	−19	−20	−21
Estimated outlays	−18	−18	−19	−20	−21
Total:					
Estimated authorization level	3	−1	−2	−18	−19
Estimated outlays	−7	−1	−2	−14	−19

The costs of this bill fall within budget function 370.

The bill would require firms to compete for most contracts that are likely to exceed $5 million. Over the past few years, Section 8(a) contracts have totaled nearly $3 billion annually. Requiring competition on contracts over $5 million could result in lower prices to the federal government. The extent of any savings is unknown, but given the large dollar value of Section 8(a) contracts, potential savings could be substantial.

Basis of Estimate

Personnel and Financial Assistance.—For fiscal year 1989, the bill would authorize appropriations of $3.5 million for hiring 70 additional personnel to carry out specific provisions of the bill. In addition, for each of the fiscal years 1989, 1990, and 1991, the bill would authorize appropriations of $5 million to make financial assistance available to program participants to help defray the costs associated with preparing an offer or bid for a government or commercial contract. This estimate assumes that the full amounts authorized will be appropriated prior to the beginning of each fiscal year. Estimated outlays are based on historical spending patterns for similar programs of the SBA.

Other Costs.—We expect that the number of firms certified as eligible for the Section 8(a) program would increase if the maximum participation term is increased to eight years. Under the present seven-year program, the Section 8(a) portfolio includes nearly 3,000 business concerns. We estimate that enactment of the bill would increase the size of the portfolio by about 400 firms by the end of fiscal year 1989, compared to current law. Based on this assumption, we expect that SBA would incur additional costs of about $0.7 million in fiscal year 1989 and about $1.3 million a year in fiscal year 1990 and beyond to maintain the level of services currently provided to Section 8(a) participants. These services include financial, technical, and management assistance to program participants.

The bill would require SBA to establish a training program at the regional level to instruct participants in the techniques for obtaining and performing federal contracts. Based on information from SBA, we expect that this training program would cost about $0.5 million in fiscal year 1989 and about $0.1 million annually in fiscal year 1990 and beyond.

Enactment of the bill would increase data collection and reporting requirements by SBA. Based on information from SBA, we estimate that about $1.0 million in additional funding would be needed

in fiscal year 1989 for the acquisition of additional computers, software development, and other expenses relating to this provision. About $0.3 million would be needed in fiscal year 1990 and beyond for software maintenance and support, and other expenses.

The bill would authorize a pilot program aimed at increasing the competitiveness of small businesses in certain types of industries. Federal agencies would be required to establish annual small business participation goals for contracts over $25,000, and to monitor the attainment of such goals. In turn, the Office of Federal Procurement Policy (OFPP) would be required to implement a system to track data on subcontract awards to small business concerns. We expect that data processing and administrative costs of OFPP would increase by about $0.2 million annually as a result of enactment of the bill.

SBA would be required to take necessary action to ensure that Business Opportunity Specialists receive adequate periodic training to assist program participants in the full utilization of Section 7(j) and 8(a) programs. We estimate that SBA would incur additional costs of about $0.3 million in fiscal year 1989 and about $0.1 million annually in fiscal year 1990 and beyond to establish a training program. Costs would be higher in fiscal year 1989 because each new business opportunity specialist authorized by this bill would require basic procurement training.

Loan Program.—The bill would authorize SBA to make direct loans to program participants for the purchase of equipment, facilities, and other assets and for working capital. For each of the fiscal years 1989, 1990, and 1991, $10 million would be authorized for the making and servicing of loans. The interest rate on loans under this program would be one percent below the Treasury rate. Outlays for the loan program were calculated by assuming that the loans are disbursed over a two-year period, based on disbursement rates from other SBA loan programs. We estimate that outlays would total $3.1 million in fiscal year 1989, $9.8 million in fiscal year 1990, $10.0 million in fiscal year 1991, $2.9 million in fiscal year 1992, and $0.1 million in fiscal year 1993. The repayment schedule assumes that loans would be made for a term of ten years.

Business Development Expense.—The bill would eliminate funding for the business development expense program (BDE). This program has been used to make grants to program participants for the purchase of equipment and other assets. The savings shown are relative to CBO baseline projections.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: On November 20, 1987, CBO transmitted to the House Committee on Small Business a cost estimate for H.R. 1807, the Capital Ownership Development Reform Act of 1987. H.R. 1807 also would make a number of changes to the SBA's Section 7(j) and 8(a) programs. However, the specific changes made to the SBA programs are different from those contained in S. 1993.

9. Estimate prepared by: Douglas Criscitello.

10. Estimate approved by: C.G. Nuckols (for James L. Blum, Assistant Director for Budget Analysis).

D. Changes in Existing Law

In compliance with rule XXVI(12) of the Standing Rules of the Senate, changes in existing law made by the statutory provisions of the bill are as follows (existing law proposed to be omitted is enclosed in brackets, new material is printed in italic, and existing law in which no changes is proposed is shown in roman):

Small Business Act

* * * * * * *

Sec. 3. (a) * * *

(1) * * *

[(2)(A) The Small Business Administration shall establish a program for the review of the size standards for eligibility of business concerns in the industry categories described in subparagraph (B) for a procurement restricted to small business concerns under section 8(a) or 15(a).

[(B) Subparagraph (A) shall apply only to business concerns in the following industry categories:

[(i) Construction.

[(ii) Architectural and engineering services (including surveying and mapping services).

[(iii) Ship building and ship repair.

[(iv) Refuse systems and related services.

[(3) If the Administrator determines, on the basis of any such review, that contracts awarded under the set-aside programs under such sections exceed 30 percent of the dollar value of the total contract awards for that industry category, as determined under the last sentence of section 15(a)(3), the Administrator shall adjust the size standards for such industry category establishing eligibility for a set aside program to a size that will likely reduce the number of contracts which may be set aside to approximately 30 percent of the value of contracts to be awarded under such sections.

[(4)(A) An interested person may petition the Administrator at any time to review an adjustment to a size standard made under paragraph (3) or any designation of an industry category made under section 15(a)(3) if the petitioner presents credible evidence that any such adjustment or designation—

[(i) is not likely to further the purposes of paragraph 3(A) or section 15(a); and

[(ii) has caused the petitioner to suffer severe financial loss.

[(B) The Administrator shall render a final determination on any petition filed under subparagraph (A) before the end of the 30-day period beginning on the date that such petition is received by the Administrator. Such determination shall be reviewable in the manner prescribed in chapter 7 of title 5, United States Code.

[(C) The Administrator shall prescribe regulations to carry out the provisions of this subsection.

[(5) The Administrator shall conduct a review under the program established under paragraph (2) at least once during every three years. Such review shall be completed and appro-

priate size standard adjustments made with the expiration of 180 days after each three-year review period.]

* * * * * * *

SEC. 4. (a) * * *

(b)(1) The management of the Administration shall be vested in an Administrator who shall be appointed from civilian life by the President, by and with the advice and consent of the Senate, and who shall be a person of outstanding qualifications known to be familiar and sympathetic with small-business needs and problems. The Administrator shall not engage in any other business, vocation, or employment than that of serving as Administrator. In carying out the programs administered by the Small Business Administration including its lending and guaranteeing functions, the Administrator shall not discriminate on the basis of sex or marital status against any person or small business concern applying for or receiving assistance from the Small Business Administration, and the Small Business Administration shall give special consideration to veterans of the Armed Forces of the United States and their survivors or dependents. The Administrator is authorized to appoint a Deputy Administrator and four Associate Administrators (including the Associate Administrator specified in section 201 of the Small Business Investment Act of 1958) to assist in the execution of the functions vested in the Administration. One of the Associate Administrators shall be designated at the time of his appointment as the Associate Administrator for Minority Small Business and Capital Ownership Development, *who shall be a career appointee in the competitive service or in the Senior Executive Service,* and shall be responsible to the Administrator for the formulation and execution of the policies and programs under sections 7(j) and 8(a) of this Act which provide assistance to minority small business concerns. The Deputy Administrator shall be Acting Administrator of the Administration during the absence or disability of the Administrator or in the event of a vacancy in the office of the Administrator.

* * * * * * *

SEC. 7. (a)(16) * * *

(17) The Administration is authorized to make loans directly to Program Participants which are eligible to receive assistance under section 7(j)(10) and 8(a) for the purchase of equipment, facilities, materials, supplies, or other necessary production or technical assets, and for working capital. Such assistance may be provided subject to the following limitations and restrictions:

(A) all loans made under this section shall be of such sound value as ot reasonably assure repayment,

(B) no financial assistance shall be extended under this subsection if the applicant can obtain credit elsewhere, and

(C) the rate of interest on financings made under this subsection shall be 2 percent below the rate established on direct loans made under paragraph (11).

* * * * * * *

SEC. 7. (j)(10) * * *

(A) * * *

[(i) assist small business concerns participating in the Program to develop comprehensive business plans with specific business targets, objectives, and goals for correcting the impairment of such concern's ability to compete, as determined for such concern pursuant to section 8(a)(6) of this Act, within a fixed period of time as mutually agreed upon by the applicant and the Administrator prior to acceptance in such program: *Provided,* That not less than one year prior to the expiration of such period, and upon the request of such concern, the Administration shall review such period and may extend such period as necessary and appropriate: *Provided further,* That no determination made under this paragraph shall be considered a denial of total participation for the purposes of section 8(a)(9) of this Act;]

(i) assist small business concerns participating in the Program either through public or private organizations to develop and maintain a comprehensive business plan which sets forth the Program Participant's specific business objectives and goals. Such business plan, developed and maintained in conformity with subparagraph (B), shall be designed to result in such Program Participant becoming a viable business concern capable of effectively competing in the marketplace upon graduation from the Program.

(B) * * *

[(C) No small business concern shall receive a contract pursuant to section 8(a) of this Act unless—

[(i) the business plan required pursuant to section 7(j)(10)(A)(i) is approved by the Administration; and

[(ii) the program is able to provide such concern with, but not limited to, such management, technical and financial services as may be necessary to achieve the targets, objectives, and goals of such business.]

(C)(i) the Associate Administrator for Minority Small Business and Capital Ownership Development shall consider applications received from the Director of the Division of Minority Small Business Certification and process such applications in accordance with subparagraph (E) of this paragraph.

(ii) Except as provided in subparagraph (F), a small business concern certified as a Program Participant shall not be eligible to participate in the Program for a period in excess of 8 years, commencing on the date of the award of its first contract under the authority of section 8(a).

(D)(i) Promptly after certification under subparagraph (E), a Program Participant shall submit a Program business plan as described in clause (ii) of this subparagraph for review by the Business Opportunity Specialist assigned to assist such Program Participant. Such plan, and subsequent revisions submitted under clause (iii) of this subparagraph, shall be approved by the Administration prior to the Program Participant being eligible for award of a contract pursuant to section 8(a).

(ii) The business plans submitted under this paragraph shall include the following:

(I) An analysis of market potential, competitive environment, and other business analyses estimating the Program Participant's prospects for profitable operations during the term of Program participation and after graduation.

(II) An analysis of the Program Participant's strengths and weaknesses with particular attention to correcting any financial, managerial, technical, or personnel conditions which are likely to impede such small business concern from winning contracts other than those obtained under section 8(a) of this Act.

(III) Specific objectives and goals for the business development of the Program Participant during the next and succeeding years utilizing the results of the analyses conducted pursuant to subclause (I) and (II).

(IV) A transition management plan outlining specific steps to assure profitable business operations after graduation (to be incorporated into the Program Participant's overall business plan during the revision relating to the fifth Program year of the firms Program Participation Term).

(V) Estimates of contract awards pursuant to section 8(a) and from other sources, which the Program Participant will require to meet the specific objectives and goals for the years covered by its approved plan. The estimates established shall be consistent with the provisions of subparagraph (L) and section 8(a).

(VI) The dollar value of the aggregate awards from the Bid and Proposal Cost Program to which the Program Participant may be eligible pursuant to section 7(m).

(iii) Each Program Participant shall annually review its currently approved business plan with its Business Opportunity Specialist and modify such plan as may be appropriate. Any modified plan shall be submitted to the Administration for approval. The currently approved plan shall be considered valid until such time as a modified plan is approved by the Administration. The annual review pertaining to the sixth and subsequent years of Program participation shall include a verification of such Program Participant's compliance with the requirement of subparagraph (L).

(E)(i) Not later than 90 days after receipt of a completed application for Program certification, the Associate Administrator for Minority Small Business and Capital Ownership Development shall issue a certificate as a Program Participant to a small business concern which is owned and controlled by socially and economically disadvantaged individuals as determined in accordance with paragraphs (4), (5), (6), and (7) of section 8(a), or deny such application. An application may not be denied solely on the basis of a determination by the Administration that adequate numbers of noncompetitive contract opportunities are not likely to be available to support the development of the firm during its Program Participation Term.

(ii) If an applicant is denied certification, the Associate Administrator for Minority Small Business and Capital Ownership Development shall notify the applicant in writing, specify-

ing the reasons for such denial and advising the applicant of the right to request a hearing to contest such denial before the Office of Hearings and Appeals in accordance with the procedures established by such Office. If the Office of Hearings and Appeals sustains such denial, no new application may be accepted for a period of one year from the date of the decision of the Office of Hearings and Appeals.

(iii) The Associate Administrator, in conjunction with the Director, shall develop procedures and guidelines to minimize the paperwork and reduce the time associated with the certification process.

(F)(i) Any small business concern participating in the Program authorized under this section and eligible for award of contracts under the authority of section 8(a) on the effective date of this section shall be deemed to be a Program Participant on such date.

(ii) Such Program Participant may continue in the Program for a period of time which is the greater of—

(I) 8 years less the number of years since the award of such small business concern's first contract under section 8(a), or

(II) the unexpired portion of its Program Participation Term established in accordance with this section.

(iii) This section shall not be deemed to create any Program eligibility for a small business concern owned and controlled by socially and economically disadvantaged individuals, if such concern was—

(I) graduated from the Minority Small Business and Capital Ownership Development Program by reason of the expiration of its Program Participation Term,

(II) terminated from participation in the Program authorized by this section pursuant to subparagraph (H), or

(III) deemed otherwise ineligible to receive assistance under this section or for the award of a contract under the authority of section 8(a).

(G) Program Participant certified as eligible to receive assistance under the authority of this section and eligible to receive contracts under section 8(a) of this Act may be graduated if such Program Participant—

(i) has been a participant in the Program for the period prescribed by subparagraph (D)(ii) or (F) of this paragraph,

(ii) has exceeded the applicable size standard established by the Administration pursuant to section 3 of this Act,

(iii) has achieved its business goals and objectives as specified in its most recent business plan established pursuant to subparagraphs (A) and (D) and elects to graduate prior to the expiration of its Program Participation Term, or

(iv) is no longer owned and controlled by an individual or individuals who are determined to be economically disadvantaged.

For purposes of this Act, the term "graduated" or "graduation" means that the Program Participant is recognized as successfully completing its Program Participation Term and is no longer

eligible to receive assistance pursuant to this section or eligible to receive an award of a contract under section 8(a).

(H) The Administration, in accordance with subparagraph (I), may terminate a Program Participant's eligibility for this Program and the program under section 8(a) prior to graduation, based on good cause, if—

(i) such Program Participant—

(I) fails to conform to the criteria for eligibility as a socially and economically disadvantaged small business concern,

(II) has a consistent pattern of delinquent performance or termination for default with respect to contracts awarded under the authority of section 8(a) of this Act,

(III) has a consistent pattern of failing to make required submissions or responses to the Administration in a timely manner,

(IV) is debarred by any contracting agency pursuant to the subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation), or

(V) willfully violates rules and regulations promulgated by the Administration; or

(ii) any of the owners or officers of such Program Participant are convicted of embezzlement, theft, forgery, bribery, falsification or any other offense indicating a lack of business integrity.

This subparagraph shall not apply in the event that a Program Participant has been found to have violated the provisions of section 16 (d) or (f). For purposes of this Act, "terminated" and "termination" shall mean the total denial of assistance pursuant to this paragraph or section 8(a) prior to graduation (as described in subparagraph (G)) or prior to the time prescribed by subparagraph (C)(ii).

(I) The Director of the Division of Minority Small Business Certification may initiate a termination proceeding by recommending such action to the Associate Administrator for Minority Small Business Capital Ownership Development. Whenever the Associate Administrator deems such termination is appropriate, within 15 days, the Program Participant shall be provided a written notice of intent to terminate, specifying the reasons for such action. No Program Participant shall be terminated from the Program pursuant to subparagraph (H) without first being afforded an opportunity for a hearing in accordance with section 8(a)(9). The Administration shall commence any such hearing within 60 days of the Program Participant's receipt of the notice of intent to terminate, unless the opportunity for such hearing is waived in writing by the Program Participant.

(J)(i) The Administration shall conduct an evaluation of a Program Participant's eligibility for continued participation in the Program whenever it receives specific and credible information alleging that such Program Participant no longer meets the requirements for Program eligibility. A Program Participant may not be suspended from participation in the Program until

a termination proceeding in accordance with subparagraph (H) has been initiated.

(ii) Upon making a finding that a Program Participant is no longer eligible, the Administration shall initiate a termination proceeding in accordance with subparagraph (H).

(K)(i) A protest, relating to the solicitation or award of a contract under the authority of section 8(a), regarding a Program Participant's eligibility under paragraphs (4), (5), (6), and (7) of section 8(a) may be filed by an offeror, the contracting officer, or other interested party relating to a contract action under the authority of section 8(a) of this Act. Such protest shall be in writing and shall specifically allege the grounds upon which the protest is based. In order to be considered, a protest must be filed with the regional office in which such challenged Program Participant has its principal place of business within 5 days of—

(I) bid opening in the case of a contract or subcontract being awarded by competitive sealed bidding or its equivalent; or

(II) receipt of notice of the apparent successful offeror in the case of a contract or subcontract being awarded by negotiation, either competitively or noncompetitively.

(ii) The regional office shall promptly review the eligibility of the party whose status is being challenged, after giving notice to such party, the party filing the protest, the contracting officer (if other than the party filing the protest) and any other interested parties deemed appropriate. The review shall include consideration of information submitted by the party whose status is being challenged, the party filing the protest, and other interested parties, if such information is received by the Administration not later than 5 days after the date such party receives the notice of protest. A decision regarding the status of the concern shall be issued by the Director of the regional office of the Division of Minority Small Business Certification not later than 15 days after receipt of the protest. The procurement action shall be suspended during such period.

(iii) Within 5 days of receipt of the decision regarding the protest, the party whose status is being challenged may file a written appeal with the Administration's Office of Hearings and Appeals.

(iv) Unless otherwise provided by law or regulation, a procurement action need not be suspended pending decision of the Office of Hearings and Appeals.

(v) The Administration may dismiss a protest without further consideration if it determines such protest is without merit or frivolous.

(vi) Whenever the Administration believes from its consideration of a protest that a party has made a statement which such party knew or had reason to know was false, the matter shall be referred to the procuring agency's investigating official designated pursuant to the Program Fraud Civil Remedies Act of 1986 (sections 3801–3812 of title 31, United States Code).

(L)(i) Except as provided in clause (ii), the Administration shall not make a noncompetitive award of a contract under section 8(a) to a Program Participant unless such Participant certifies at the time of its designation for contract award that the dollar amount of contracts awarded noncompetitively to such Program Participant by the Administration under section 8(a) does not exceed the following—

(I) 70 percent of the Program Participant's new sales during the fifth or subsequent year of its Program Participation Term; or

(II) 50 percent of the Program Participant's new sales during the seventh year of its Program Participation Term.

(ii) The Administrator shall take such measures as may be appropriate to assure that not more than 25 percent of a Program Participant's new sales are from noncompetitively awarded contracts in the final year of its Program Participation Term.

(iii) Notwithstanding the requirements of clauses (i) and (ii), the administrator may authorize the award of a contract to a Program Participant under section 8(a), if the Administration determines that—

(I) the Program Participant's total sales from noncompetitive section 8(a) contract awards do not exceed the maximum specified percentage by more than 5 percent;

(II) the Program Participant has a resonable business expectation of receiving a competitive contract award that will bring such firm into compliance with the percentage specified in clause (i); and

(III) denial of the contract award under section 8(a) would cause the firm severe economic harm, jeopardizing its future ability to successfully attain the objectives specified in clause (i).

(M) Notwithstanding the requirements of subparagraph (L), the Administrator may authorize the noncompetitive award of a contract to a Program Participant under section 8(a), if the Administration determines that the Program Participant—

(i) is eligible for the Program under the authority of subparagraph (F),

(ii) obtains a Program Participation Term of 5 or fewer years under subparagraph (F), which years shall be deemed to be such Program Participant's fourth and succeeding years in the Program for purposes of this section and section 8(a), and

(iii) has made a reasonable effort to comply with the provisions of subparagraph (L), which shall be considered to be goals rather than requirements for purposes of evaluating the business activity of such Program Participant.

(iv) * * *

(v) analyze and report the causes of success and failure of small business concerns participating in Program; **[**and**]**

(vi) provide assistance necessary to help small business concerns participating in the Program to procure surety bonds, with such assistance including, but not limited to (I)

the preparation of application forms required to receive a surety bond, (II) special management and technical assistance designed to meet the specific needs of small business concerns participating in the Program and which have received or are applying to receive a surety bond, and (III) preparation of all forms necessary to receive a surety bond guarantee from the Administration pursuant to title IV, part B of the Small Business Investment Act of 1958[.]; *(vii) establish a training program to be delivered at the regional level to instruct Program Participants on the techniques of successfully obtaining and performing Federal contracts; and*

(viii) provide assistance to public or private organizations or individuals to conduct seminars to assist Program Participants to develop business plans which will enhance the concern's potential for operating profitably upon graduation from the Program.

SEC. 7. (j) * * *

(11)(A) There is established within the Office of Minority Small Business and Capital Ownership Development a Division of Minority Small Business Certification which shall exercise the responsibilities and functions specified in subparagraph (B). The Division shall be administered by a Director who shall be responsible to the Associate Administrator for Minority Small Business and Capital Ownership Development. To facilitate the timely exercise of the Division's responsibilities and functions, an office of the Division shall be established in each regional office of the Administration.

(B) The responsibilities and functions of the Division of Minority Small Business Certification, to be exercised through its regional offices, shall be to—

(i) receive applications for certification as Program Participants from small businesses owned and controlled by socially and economically disadvantaged individuals, and notify such applicant in writing within 15 days of the receipt of such application whether such application is complete and suitable for evaluation or whether specific deficiencies make such application unsuitable for evaluation at that time;

(ii) review and evaluate applications required of prospective Program Participants;

(iii) visit the offices and facilities of such applicants when appropriate to evaluate applications;

(iv) make recommendations regarding certification of a prospective Program Participant to the Director;

(v) review periodically the financial and other reports of each Program Participant to confirm its continued Program eligibility;

(vi) review finance and other reports whenever a Program Participant initiates any change in ownership interest or other change which could impair continued Program eligibility;

(vii) initiate through the Director a request for a termination proceeding with respect to a Program Participant deemed to have met one or more of the grounds for termination set forth in paragraph 10(H); and

(viii) decide protests regarding Program Participants' eligibility under paragraphs (4), (5), (6), and (7) of section 8(a) to participate in the program authorized by this subsection.

(C) In each Small Business Administration office responsible for assisting one or more Program Participants there shall be a position designated as a Business Opportunity Specialist. To the maximum extent practicable the Administration shall assure that an adequate number of Business Opportunity Specialists are assigned to each district office to carry out the responsibilities of this section and section 8(a) and to assist Program Participants.

(D) The Administration shall take such actions as may be appropriate to ensure that any person employed as a Business Opportunity Specialist receives adequate periodic training to assure such employee is capable of assisting Program Participants to fully utilize the Program and to meet the requirements of this Act.

(12)(A) The Administrator shall appoint a Task Force on Small Business Development which shall collect industry data; assess the developmental cycles of particular industries; assess the financing problems facing industries; recommend solutions; and compile a recommended Primary Industry Classification Schedule upon which future Program Participation Terms might be rationally based. The Task Force shall file a written report with the Administrator no later than April 15, 1990, and the Administration shall make the report available to the House and Senate Small Business Committees immediately thereafter. The Task Force shall be composed of 15 members who are actively involved in managing financing, or advising small businesses; including a representative from the Small Business Administration, the Securities and Exchange Commission, the Department of the Treasury, and the Department of Labor.

(B) The Administrator shall develop and implement a process for the systematic collection of data on the benefits derived by the economy of the United States and by Program Participants.

(C) Beginning on April 30, 1989, and each year thereafter, the Administrator shall submit a report to the Committees on Small Business of the Senate and the House of Representatives on the Minority Small Business and Capital Ownership Development Program which includes—

(i) the total dollar value of contracts (including options) awarded (competitively and noncompetitively) during the preceding fiscal year under section 8(a) and amount of such contracts expressed as a percentage of total sales of—

(I) all Program Participants in the Minority Small Business and Capital Ownership Development Program during such year; and

(II) all program Participants broken down to reflect each year of the eight-year Program Participation Term;

(ii) the dollar value of contracts (including options) awarded (competitively and noncompetitively) under section 8(a), straitified at such dollar increments as the Administration deems appropriate for each four digit standard industrial classification code under which such contracts were classified; and

(iii) such other information as the Administration deems appropriate.

* * * * * * *

SEC. 7. (l)(9) * * *

(m)(1) The Administrator is authorized to make available to Program Participants financial assistance to help defray the costs to be incurred in the preparation of offers necessary to effectively compete for the award of government and commercial contracts.

(2) Program Participants shall be eligible for such bid and proposal cost financial assistance during—

(A) The first through the fifth year of the Program Participant's Program Participation Term; and

(B) The sixth and succeeding years of the Program Participant's Program Participation Term, if the Program Participant has failed to meet the requirements of subsection (j)(10)(L).

(3) The amount of such assistance which may be provided to an eligible Program Participant during the succeeding fiscal year shall be annually determined by the Administration based on an analysis conducted in conjunction with the Program Participant during the review of such Program Participant's business plan, but shall not exceed an aggregate of $100,000 in any fiscal year.

(4) Subject to regulations promulgated by the Administration, an award of financial assistance in the form of a grant may be made in response to an application from a Program Participant—

(A) for such direct and indirect costs (not otherwise reimbursed by the Government) which the Program Participant has incurred for the preparation of an offer in response to a competitive contract solicitation; and

(B) in an amount not to exceed the level of bid and proposal cost assistance authorized in the Program Participant's business plan for that fiscal year.

(n) Bid and proposal costs incurred by a Program Participant (not otherwise reimbursed by the Administration) shall be allowable costs on cost reimbursement contracts to the full extent permitted under any regulatory formula used by the procuring agency, notwithstanding any limitation on the total amounts otherwise allowable under such formula.

* * * * * * *

SEC. 8. (a)(1) * * *

(A) to enter into contracts with the United States Government and any department, agency, or officer thereof having procurement powers obligating the Administration to furnish articles, equipment, supplies, services, or materials to the Government or to perform construction work for the Government. In any case in which the Administration certifies to any officer of the Government having procurement powers that the Administration is competent and responsible to perform any specific Government procurement contract to be let by any such officer, such officer shall be authorized in his discretion to let such procurement contract to the Administration upon such terms and conditions as may be agreed upon between the Administration and the procurement officer. Whenever the Ad-

ministration and such procurement officer fail to agree, the matter shall be submitted for determination to the Secretary or the head of the appropriate department or agency by the Administrator; *not later than 5 days from the date the Administration is notified of a procurement officer's adverse decision, the Administrator shall provide notice of his intent to appeal such adverse decision and within 15 days of such date shall request a reconsideration of the adverse decision by the Secretary of the department or agency head. Upon receipt of the notice of intent to appeal, the Secretary of the department or the agency head shall suspend further action regarding the procurement until a written decision on the Administrator's request for reconsideration has been issued by such Secretary or agency head. If the Administrator's request for reconsideration is denied, the Secretary of the department or agency head shall specify the reasons therefor, and the determinations supporting such decision, which shall be made a part of the contract file for the requirement.*

* * * * * * *

(4)(A) For the purposes of this section, the term "socially and economically disadvantaged small business concern" means any small business concern which meets the requirements of subparagraph (B) and—

(i) which is not less than 51 percent unconditionally owned by—

(I) one or more socially and economically disadvantaged individuals, or

(II) an economically disadvantaged Indian tribe, or

(ii) in the case of any publicly owned business, not less than 51 percent of the stock of which is unconditionally owned by—

(I) one or more socially and economically disadvantaged individuals, or

(II) an economically disadvantaged Indian tribe.

* * * * * * *

(6) Economically disadvantaged individuals are those socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same business area who are not socially disadvantaged. In determining the degree of diminished credit and capital opportunities the Administration shall consider, but not be limited to, the assets and net worth of such socially disadvantaged individual. In determining the economic disadvantage of an Indian tribe, the Administration shall consider, where available, information such as the following: the per capita income of members of the tribe excluding judgment awards, the percentage of the local Indian population below the poverty level, and the tribe's access to capital markets. *The Administrator shall establish a threshold of personal net worth for socially disadvantaged individuals (exclusive of the value of the program participants owned by the socially disadvantaged individual or investments in such program participant). A personal net worth in excess*

of the value set by the Administrator shall be presumed to indicate a lack of economic disadvantage.

[(7) No small business concern shall be deemed eligible for any assistance pursuant to this subsection unless the Administration determines that with contract, financial, technical, and management support the small business concern will be able to perform contracts which may be awarded to such concern under paragraph (1)(C) and has reasonable prospects for success in competing in the private sector.]

(7)(A) No small business concern shall be deemed eligible for any assistance pursuant to this subsection unless the Administration determines that with contract, financial, technical, and management support the small business concern will be able to perform contracts which may be awarded to such concern under paragraph (1)(C) and has reasonable prospects for being successful in competing in the private sector. Except as provided in subparagraph (b) or by regulations established by the Administration, an individual or business concern may not be deemed eligible for participation in the program more than once.

(B) The Administration may permit more than one small business concern owned by a socially and economically disadvantaged Indian tribe to be eligible for assistance pursuant to this subsection and section 7(j)(10) if—

(i) the Indian tribe does not own another firm in the same industry which has been determined to be eligible to receive contracts under this program, and

(ii) the individuals responsible for the management and daily operations of the concern do not manage more than two Program Participants.

(8) [All determinations] *Each program participant shall certify, on an annual basis, that it meets the standards of paragraphs (4), (5), and (6) and is eligible for continued program participation. All determinations* made pursuant to paragraph (5) with respect to whether a group has been subjected to prejudice or bias shall be made by the Administrator after consultation with the Associate Administrator for Minority Business and Capital Ownership Development. All other determinations made pursuant to paragraphs (4), (5), (6), and (7) shall be made by the Associate Administrator for Minority Small Business and Capital Ownership Development under the supervision of, and responsible to, the Administrator.

* * * * * * *

[(13) For purposes of this subsection, the term "Indian tribe" means any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation (within the meaning of the Alaska Native Claims Settlement Act) which—

[(A) is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or

[(B) is recognized as such by the State in which such tribe, band, nation, group, or community resides.]

(13) For purposes of this subsection, the term "Indian tribe" means—

(A) any Indian tribe, band, nation, or other organized group or community of Indians, including any Alaska Native village or regional or village corporation (within the meaning of the Alaska Native Claims Settlement Act) which—

(i) is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or

(ii) is recognized as such by the State in which such tribe, band, nation, group, or community resides; and

(B) any community service organization serving Native Hawaiians in the State of Hawaii which—

(i) is a not-for-profit organization chartered by the State of Hawaii;

(ii) is controlled by Native Hawaiians; and

(iii) whose business activities will principally benefit such Native Hawaiians.

(14) * * *

(15)(A) Each executive agency reporting to the Federal Procurement Data System contract actions with an aggregate value in excess of $50,000,000 in fiscal year 1987 and any succeeding fiscal year shall prepare a forecast of expected contract opportunities or classes of contract opportunities for the next and succeeding fiscal years that it considers to be suitable for award to small business concerns, including those owned and controlled by socially and economically disadvantaged individuals. Such forecast shall be periodically revised during such year. To the extent such information is available, the agency forecasts shall specify:

(i) The approximate number of individual contract opportunities (and the number of opportunities within a class).

(ii) The approximate dollar value, or range of dollar values, for each contract opportunity or class of contract opportunities.

(iii) The anticipated time (by fiscal year quarter) for the issuance of a procurement request.

(iv) The activity responsible for the award and administration of the contract.

(B) The head of each executive agency subject to the provisions of subparagraph (A) shall within 10 days of completion furnish such forecasts to—

(i) the Director of the Office of Small and Disadvantaged Business Utilization established pursuant to section 15(k) for such agency; and

(ii) the Administrator.

(C) Such forecasts shall be available to small business concerns.

(b) RATE OF CONTRACT SUPPORT AS ELEMENT OF ANNUAL REVIEW OF BUSINESS PLAN.—Section 8(a) of the Small Business Act is further amended by adding at the end thereof the following new paragraph:

"(16)(A) Each Program Participant shall annually forecast its needs for contract awards under this section for the next Program year and the succeeding Program year during the review of its business plan, conducted pursuant to section 7(j)(10)(A).

"(B) Such forecast shall include—

"(i) the aggregate level of contract support (number and dollar value) to be sought under section 8(a), reflecting compliance with the requirements of section 7(j)(10)(L),

"(ii) the types of contract opportunities being sought, identified by Standard Industrial Classification (SIC) Code or otherwise,

"(iii) an estimate of the level of contract support (number and dollar value) to be sought on a competitive basis,

"(iv) an estimate of the level of support (number of applications and estimated dollar value of each) to be sought from the Bid and Proposal Cost Program under section 7(m), and

"(v) such other information as may be requested by the Business Opportunity Specialist to provide effective business development assistance to the Program Participant.

"(17)(A) Except as necessary to implement the policy stated in subparagraph (C), the Administration shall award contracts under this section to the concern recommended by the procuring agency offering the contract opportunity if—

"(i) the Program Participant is determined to be a responsible contractor with respect to performance of such contract opportunity;

"(ii) the award of such contract would be consistent with the Program Participant's business plan; and

"(iii) the award of the contract would not result in the Program Participant exceeding the requirements established by section 7(j)(10)(L).

"(B) Contract awards shall be made to the Program Participants selected through a competition conducted pursuant to subparagraph (E).

"(C) The Administrator may consider the geographical distribution of contracts and may direct the award of any contract under this section, other than a competitive contract award made pursuant to subparagraph (E) of this paragraph, to achieve a more equitable distribution of contracts among the Administration's various regions and among Program Participants.

"(D)(i) Except for a contract opportunity that is a 'national buy contract', the source selection official for noncompetitive awards under this section shall be the head of the Minority Small Business and Capital Ownership Development Program in the regional office for the region in which the agency making the contract opportunity available is located.

"(ii) The source selection official for a 'national buy contract' shall be designated by the Administrator.

"(iii) For purposes of this subparagraph, the term 'national buy contract' means a contract for the procurement of supplies or services that may require performance in more than one of the Administration's regions and exceeds a dollar threshold specified in regulations promulgated by the Administration.

"(E)(i) An agency offering a contract opportunity for award under this section determine the Program Participant eligible for award of the contract on the basis of a competition restricted to eligible Program Participants, if—

"(I) there is a reasonable expectation that at least two eligible Program Participants will submit offers and that award can be made at a fair market price, and

"(II) the anticipated award price of the contract (including all options) will exceed $5,000,000.

"(ii) The Associate Administrator for Minority Small Business and Capital Ownership Development, on a non-delegable basis, is authorized to approve a request from an agency to award a contract opportunity under this section on the basis of a competition restricted to eligible Program Participants even if the anticipated award price is not expected to exceed the dollar amounts specified in clause (i)(II).

"(iii) Protests (other than those subject to section 7(j)(10)(K)) arising out of the solicitation or award of a contract opportunity restricted to competition among eligible Program Participants under the authority of this section shall be eligible for resolution pursuant to—

"(I) subchapter V of chapter 35, title 31, United States Code;

"(II) section 111(h) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 759(h)); or

"(III) section 33.103 of title 48, Code of Federal Regulations (or any successor regulation).

"(F) A contract requirement that has been performed through a contract awarded to a Program Participant under this section, may subsequently be offered through full and open competition, if—

"(i) at the expected time of contract solicitation the incumbent contractor will be a graduate of the Minority Small Business and Capitol Ownership Development Program;

"(ii) such contractor requests that the next contract opportunity be solicited on an unrestricted basis; and

"(iii) the agency head, or a designee of such officer, approves the request of such contractor.

"(G) Notwithstanding the requirements of this paragraph, an agency may conduct a competition in the same form and manner used prior to the effective date of the Minority Business Development Program Reform Act of 1988, if—

"(i) the competition is conducted among two or more Program Participants;

"(ii) the contract award will be made principally on the basis of price or price-related factors;

"(iii) one or more contract awards are expected to be made, at fair market prices, as a result of such competition; and

"(iv) the agency has a continuing requirement for the product or service previously obtained through contract awards under the authority of section 8(a).

"(18)(A) Subject to the provisions of subparagraph (B), a small business concern awarded a contract under this section during the term of its participation in the Minority Small Business and Capital Ownership Development Program shall complete performance of the contract (including any additional requirements flowing from the Government's exercise of any contract options or any contract modifications within the scope of the contract), notwithstanding the fact that the period of contract performance may extend beyond such firm's graduation from the Program.

"(B) In exercising the Government's discretion with respect to contract options and contract modifications, the contracting officer shall limit such contract modifications to those necessary to attain contract performance, avoiding any nonssential expansion of the scope or term of performance and avoiding the exercise of any options (unless such action would have a severe adverse impact on the program or mission being supported by the contract), when the contract is being performed by—

"(i) a contractor who has been terminated for cause from the Program in accordance with section 7(j)(10)(H); or

"(ii) a contractor who, after award of the contract option or modification, is unable to meet the requirements of section 7(j)(10)(L).

"(19)(A) A contract awarded pursuant to this subsection shall be performed by the socially and economically disadvantaged small business concern that initially received such contract. Subject to the provisions of subparagraph (B), such contract shall be deemed to be terminated for the convenience of the Government, if the eligible concern directly or indirectly transfers the contract to another business concern during the initial year of performance, unless the Administrator grants prior written approval based on a determination that—

"(i)(I) the proposed transferee is a current participant in the Minority Small Business and Capital Ownership Development Program authorized under section 7(j)(10); and

"(II) the transferee would otherwise be eligible to receive the award directly; or

"(ii) the individual upon whom Program eligibility is based is no longer able to exercise control of the firm due to incapacity or death.

"(B) The Administrator, on a non-delegable basis, may waive the requirements of subparagraph (A), if the head of the contracting agency for which the contract is being performed certifies that termination of the contract would severely impair attainment of the agency's program objectives or missions and requests the Administrator to grant such waiver.

"(20)(A) No person within the employ of the Administration shall, during the term of such employment and for a period of one year after such employment has been terminated, engage in any activity or transaction specified in subparagraph (B) with respect to any Program Participant certified during such person's term of employment, if such person participated personally and substantially in decisionmaking responsibilities relating to such Program Participant or with respect to the administration of any assistance provided to Program Participants generally under this subsection, section 7(j)(10), or section 7(m).

"(B) The activities and transactions prohibited by subparagraph (A) include—

"(i) the buying, selling, or receiving (except by inheritance) of any legal or beneficial ownership of stock (except publicly-traded stock) or any other ownership interest or the right to acquire any such interest;

"(ii) the entering into or execution of any written or oral agreement (whether or not legally enforceable) to purchase or otherwise obtain any right or interest described in clause (i); or

"(iii) the receipt of any other benefit or right that may be an incident of ownership.

"(C) Any current or former employee of the Administration who violates this paragraph shall be subject to civil penalty under the program Fraud Civil Remedies Act of 1986 (sections 3801–3812 of title 31, United States Code), except that the administrative remedy may not exceed 300 percent of the maximum gain such employee realized or could have realized as a result of engaging in the activities or transactions prohibited by subparagraph (B).

"(21)(A) Any employee of the Administration who has authority to approve or disapprove, or direct others to approve or disapprove, any action with respect to any program or activity conducted under this subsection, section 7(j)(10), or section 7(m) shall not consider the political affiliation or political activity of any Program applicant, Program Participant or other interested party in the exercise of such discretionary authority. Employees of the Administration shall promptly report to the Inspector General of the Administration any solicitation or direction to consider political affiliation or political activity.

"(B) Any employee who violates subparagraph (A) may also be subject to disciplinary personnel actions to include separation from service, reduction in grade, suspension, or reprimand.

"(C) The activities or transactions prohibited by subparagraph (A) and the penalties provided by subparagraph (B) shall be in addition to, and not in lieu of, any other prohibitions or penalties prescribed under any other provision of law.

"(22) Small business concerns participating in the program under section 7(j)(10) and eligible to receive contracts pursuant to this section shall annually report to their assigned Business Opportunity Specialist the following:

"(A) A listing of any agents, representatives, attorneys, accountants, consultants, and other parties (other than employees) receiving compensation to assist in obtaining a Federal contract for such Program Participant.

"(B) The amount of compensation received by any person listed under clause (i) during the relevant reporting period and a description of the activities performed in return for such compensation.

The Business Opportunity Specialist shall promptly forward such report to the Associate Administrator for Minority Small Business and Capital Ownership Development.".

SEC. 8. (d)(4) * * *

[(E)] *(E)(i)* Notwithstanding any other provision of law, every Federal agency, in order to encourage subcontracting opportunities for small business concerns and small business concerns owned and controlled by the socially and economically disadvantaged individuals as defined in paragraph (3) of this subsection, is hereby authorized to provide such incentives as such Federal agency may deem appropriate in order to encourage such subcontracting opportunities as may be commensurate with the efficient and economical performance of the con-

tract: *Provided,* That, this subparagraph shall apply only to contracts let pursuant to the negotiated method of procurement.

(ii) Each contract subject to the requirements of this paragraph or paragraph (5) shall contain a provision providing for the payment of liquidated damages in the event that the prime contractor fails to make a good faith effort to comply with the requirements contained in paragraph (3) or with any subcontracting plan required of such contractor under the authority of this subsection. The agency awarding the contract shall ensure that the goals offered by the apparent succcessful bidder or offeror are not substantially less than its performance on prior contracts.

* * * * * * *

SEC. 15. (g) * * *

(1) The President shall annually establish goals for procurement conrtracts awarded to small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals. The goal for participation by small business concerns shall be established at not less than 20 percent of the total value of all prime contract awards for each of the fiscal years 1989 through 1993, and at 25 percent of such awards for fiscal year 1994 and each fisal year thereafter. The goal for participation by small business concerns owned and controlled by socially and economically disadvantaged individuals shall be established at not less than 5 percent of the total value of all prime contract and subcontract awards for each of the fiscal years 1989 through 1997, and at 10 percent of such awards for fiscal year 1998 and each fisal year thereafter. In calculating whether the Government-wide goal for participation by small business concerns has been attained, awards to small business concerns owned and controlled by socially and economically disadvantaged individuals shall not be counted.

[(g) The head] *(2) The head* of each Federal agency shall, after consultation with the Administration, establish goals for the participation by small business concerns, and by small business concerns owned and controlled by socially and economically disadvantaged individuals, in procurement contracts of such agency *having a value of $25,000 or more.* Goals established under this subsection shall be jointly established by the Administration and the head of each Federal agency and shall realistically reflect the potential of small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals to perform such contracts and to perform subcontracts under such contracts. Whenever the Administration and the head of any Federal agency fail to agree on established goals, the disagreement shall be submitted to the Administrator of the Office of Federal Procurement Policy for final determination. For the purpose of establishing goals under this subsection, the head of each Federal agency shall make consistent efforts to annually expand participation by small business concerns from each industry category in procurement contracts of the agency, including participation by small business concerns owned and controlled by socially and economical-

ly disadvantaged individuals. The head of each Federal agency, in attempting to attain such participation, shall consider—

[(1)] *(A)* contracts awarded as the result of unrestricted competiton; and

[(2)] *(B)* contracts awarded after competition restricted to eligible small business concerns under this section and under the program established under section 8(a).

[(h)] *(h)(1)* At the conclusion of each fiscal year, the head of each Federal agency shall report to the Administration on the extent of participation by small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals in procurement contracts of such agency. Such reports shall contain appropriate justifications for failure to meet the goals established under subsection (g) of this section. [The Administration shall submit to the Select Committee on Small Business of the Senate and the Committee on Small Business of the House of Representatives information obtained from such reports, together with appropriate comments.]

(2) The Administration shall annually compile and analyze the reports submitted by the individual agencies pursuant to pargraph (1) and shall submit them to the President. The Administration's submission to the President shall include the following:

(A) The Government-wide goals for participation by small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals and the performance in attaining such goals.

(B) The goals set by each agency and their performance in attaining their individual goals.

(C) An analysis of why the Government-wide goals or individual agency goals were not attained and the actions planned to achieve the goals in the succeeding fiscal year.

(D) The number and dollar value of contracts awarded to small business concerns and small business concerns owned and controlled by socially and economically disadvantaged individuals through—

(i) non-competitive negotiation,

(ii) competition restricted to small business concerns owned and controlled by socially and economically disadvantaged individuals,

(iii) competition restricted to small business concerns, and

(iv) unrestricted competitions for each agency and on a Government-wide basis.

(3) The President shall include the information required by paragraph (2) in the annual report to the Congress on the State of Small Business, pursuant to section 303(a) of the Small Business Economic Policy Act of 1980 (15 U.S.C. 631b)).

* * * * * * *

[(m)(1) The President shall, not later than October 1, 1979, transmit to the Select Committee on Small Business and the Committee on Armed Services of the Senate and to the Committee on Small Business and the Committee on Armed Services of the House of Representatives a report on the labor surplus area procurement

program under this section and the manpower policy described in subparagraph (D). Such report, together with recommendations, shall include, but not be limited to—

[(A) an analysis of the effectiveness of such labor surplus area procurement program, including its effectiveness in creating jobs in the areas of high unemployment and the method by which labor markets are classified and designated as labor surplus areas;

[(B) its potential benefits to Federal, State and local governments, including tax benefits, reductions in federal payments to labor surplus areas, and reductions in State unemployment costs where such information is available;

[(C) its potential costs, including its impact on the efficient utilization of Federal resources, its effect on the local economy of non-labor surplus areas, its impact on small business concerns not in labor surplus areas to the extent such information is available, and its impact on contract costs to the Federal Government; and

[(D) with respect to the implementation by the Department of Defense Manpower Policy Number 4A (32A CFR Chapter 1) or any successor policy, in addition to the matters required by subparagraphs (A), (B), and (C), information concerning the impact on such matters of the expenditure of any funds which were available for procurement and which were not obligated for expenditure on September 30, 1977.]

(m)(1) Each agency subject to the requirements of section 1207 of the National Defense Authorization Act for Fiscal Year 1987 (10 U.S.C. 2301 note) shall, when implementing such requirements—

(A) establish policies and procedures that insure that there will be no reduction in the number or dollar value of contracts awarded pursuant to this section and section 8(a) in order to achieve any goal or other program objective; and

(B) assure that such requirements will not alter or change the procurment process used to implement this section or section 8(a).

(2) All procurement center representatives (including those referred to in subsection (k)(6)), in addition to such other duties as may be assigned by the Administrator, shall—

(A) monitor the performance of the procurement activities to which they are assigned to ascertain the degree of compliance with the requirements of paragraph (1);

(B) report to their immediate supervisors all instances of noncompliance with such requirements; and

(C) increase, insofar as possible, the number and dollar value of procurements that may be used for the programs established under this section, section 8(a), and section 1207 of the National Defense Authorization Act for Fiscal year 1987 (10 U.S.C. 2301 note).

* * * * * * *

SEC. 16. * * *

[(d) Whoever misrepresents the status of any concern or person as a "small business concern" or "small business concern owned

and controlled by socially and economically disadvantaged individuals", in order to obtain for oneself or another any—

[(1) prime contract to be awarded pursuant to section 9 or 15;

[(2) subcontract to be awarded pursuant to section 8(a);]

(d)(1) Whoever misrepresents the status of any concern or person as a "small business concern" or "small business concern owned and controlled by socially and economically disadvantaged individuals", in order to obtain for oneself or another any—

(A) prime contract to be awarded pursuant to section 9 or 15;

(B) subcontract to be awarded pursuant to section 8(a);

(C) subcontract that is to be included as part or all of a goal contained in a subcontracting plan required pursuant to section 8(d); or

(D) prime or subcontract to be awarded as a result, or in furtherance, of any other revision of Federal law that specifically references section 8(d) for a definition of program eligibility,

(2) shall—

(A) be punished by a fine of not more than $100,000 or by imprisonment for not more than 5 years, or both;

(B) be subject to the administrative remedies prescribed by the Program Fraud Civil Remedies Act of 1986 (sections 3801–3812 of title 31, United States Code);

(C) be subject to suspension and debarment procedures specified in subpart 9.4 of title 48, Code of Federal Regulations (or any successor regulation); and

(D) be ineligible for participation in the programs authorized by sections 8(a), 8(d), 9, and 15 for a period not to exceed 3 years.

SEC. 16. (e) * * *

(f) Whoever falsely certifies compliance with the requirements of section 7(j)(10)(L) of this Act shall be subject to the penalties prescribed in paragraph (d).

* * * * * * *

APPENDIXES

APPENDIX A

EXTRACT FROM:

100th Congress 1st Session	COMMITTEE PRINT	S. PRT. 100-29

SURVEY OF THE GRADUATES OF THE SMALL BUSINESS ADMINISTRATION SECTION 8(a) MINORITY BUSINESS DEVELOPMENT PROGRAM

REPORT

OF THE

COMMITTEE ON SMALL BUSINESS
UNITED STATES SENATE

MAY 12, 1987

Printed for the use of the Committee on Small Business

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1987

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CHAPTER I.—INTRODUCTION

The Senate Committee on Small Business has legislative and oversight responsibility for the Small Business Administration (SBA) and all of its programs. This report presents the Committee's findings from a national survey that was conducted of firms that have graduated from the Section 8(a) SBA Minority Small Business program, pursuant to Public Law 96-481 enacted in October 1980. This law required that definite graduation dates be set for all firms participating in the 8(a) program. The Committee conducted the survey in order to determine the status of 8(a) firms that graduated since enactment of Public Law 96-481 and to assess the effectiveness of the business development aspects of the program in preparing firms for the competitive marketplace.

The survey was mailed to 461 graduated 8(a) firms on August 14, 1986; 177 responses were received, resulting in a response rate of 38 percent. A brief synopsis of the Committee's major findings is presented below. These findings are given in greater detail later in the report.

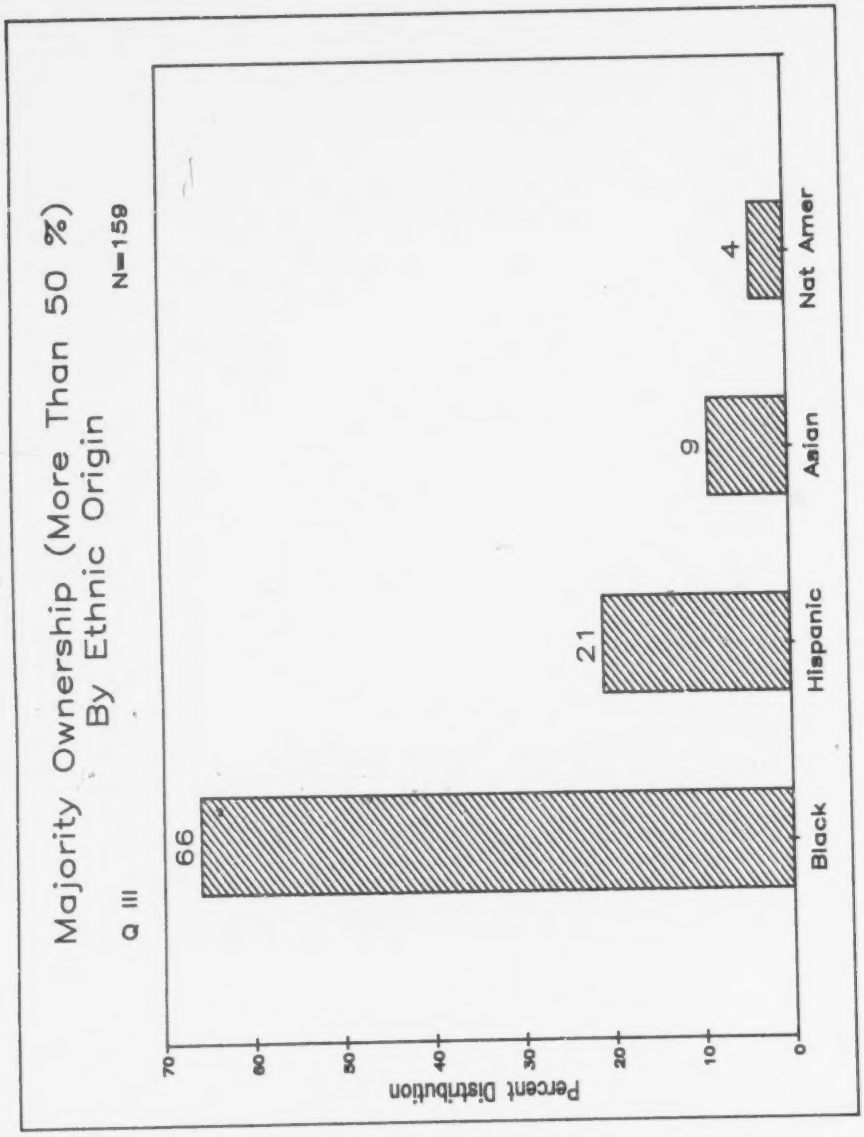
- Most graduated firms have remained in the same industries with a majority being concentrated in construction or related fields and janitorial services and maintenance. Very few of the survey respondents were in manufacturing or hi-tech industries—other areas of significant federal government contracting activity.
- In measuring the healthiness of firms that responded, most owners said they were doing well enough to get by or doing very well. According to financial and other numerical data provided by these respondents, such as number of employees, sales, and net profits, more than 100 of the 177 respondents ranked in the top quartile of minority small businesses nationally.
- Only 18 of the 177 firms responded that they were no longer in business. This would result in an "Out of Business" Rate of about 10 percent over 4 years (1982-86) or about 2.5 percent each year for the owners that responded. However, the overall possible Out of Business Rate for all firms in the original sample is much higher. With the aid of Dun and Bradstreet, extensive telephoning and multiple mailings by Committee staff, the Out of Business Rate was determined to range from 21 to 30 percent or 5.2 to 7.5 percent over each of 4 years.
- Most respondents viewed the 8(a) program as a contracts program but sharply criticized it as a business development vehicle which would include management and technical assistance as well as contract support.
- Many firms felt they were "dropped" from the program and that neither SBA nor the Minority Business Development Agency (MBDA) at the Department of Commerce provided

transitional help or a phase-out period of assistance prior to or after graduation. Most firms said they were not contacted by MBDA at all, before or after graduation.

- The impact of graduation on firms produced mixed and, in some cases, contradictory results. Some respondents said graduation had a devastating effect and that their firm failed or failed to grow after leaving the program. However, most firms said they would *not* likely go out of business because of graduation and that they were becoming competitive in the private sector.
- A majority of the respondents felt they did not have enough time in the program. Many firms felt the optimum length of time for participation should be 10 years, rather than the 5 to 7 presently allowed. However, most firms felt the program should be based on the firm's development, not number of years. On an average, firms that responded to the survey were in the program for 9 years.
- Slightly more than half of the survey respondents indicated they continued to receive federal government contracts as well as commerical contracts after graduating and entering the competitive marketplace. Slightly less than half of the respondents said they also won state and local government contracts. However, very few have become subcontractors to major prime contractors.
- Of the 177 firms that responded, only one shifted from 100 percent minority to 100 percent non-minority ownership; the remainder maintained original ownership or, in the case of four firms, shifted to no majority.

See Figure A.

Figure A


Majority Ownership (More Than 50 %)
By Ethnic Origin
Q III
N=159
Percent Distribution
0
10
20
30
40
50
60
70
66
21
9
4
Black
Hispanic
Asian
Nat Amer

Each of the findings is presented, with statistical data and comments in Chapter IV of this report.

CHAPTER II.—LEGISLATIVE HISTORY AND PURPOSE OF THE 8(a) PROGRAM

For the past two decades the Federal Government has been actively involved in promoting programs to foster the economic development and ownership of businesses by minorities. The SBA 8(a) program—named after a section of the Small Business Act—is one of the Federal Government's principal minority business programs.

Originally, Section 8(a) was established to give SBA the authority to contract with other federal agencies and to subcontract the work to small businesses. SBA did not exercise the authority, however, until 1967 when President Johnson ordered that it be used to direct contracts for businesses located in distressed urban communities in order to create jobs. In 1969, SBA redesigned the program to give federal contract support to small firms owned by socially or economically disadvantaged persons. In a ten-year period, from 1970 to 1980, the 8(a) program grew to include approximately 2,000 firms. These firms primarily were provided contract assistance.

Following publicized abuses, General Accounting Office (GAO) investigations and Congressional hearings to review the operation of the program, Congress provided a statutory basis and direction for this program with the enactment of Public Law 95-507. This Committee concluded that as the program had been administered, it lacked any specific mission except to provide contract assistance and that it failed to foster "business development, which would permit participating minority businesses to competitively operate in the private sector without a dependency on government contracts." Thus, Public Law 95-507 made significant amendments to the Small Busines Act to restructure the 8(a) program and established within SBA an Office of Minority Small Business to emphasize business development.

Specifically, the law created the position of Associate Administrator for Minority Small Business and Capital Ownership and Development (MSB/COD). This office was given the responsibility for operation of the 8(a) program and the authority under section 7(j) of the Small Business Act to provide management and technical assistance to minority businesses. Under subsection 7(j)(1-9), SBA was given broad authority to assist minority businesses. Section 7(j)(10) established the Capital Ownership and Development Program (COD) exclusively for firms participating in the 8(a) program. Among other things, the law required SBA to assist 8(a) firms to develop business plans with specific business targets, objectives, and goals. Also, Section 211 of Public Law 95-507 created a subcontracting program to encourage major prime contractors to provide subcontracting opportunities for small and small disadvantaged businesses. Under this statutory framework, Congress sought to provide the SBA with a full range of financial, management, as well as contractual resources to promote the development of firms that participated in the 8(a) program. Implicit in this restructuring of the program was the notion that, after receiving assistance in

the SBA 8(a) program, firms would graduate into the competitive marketplace.

Concerned that SBA had not moved in a timely fashion to establish and implement program completion criteria and that few firms had left the 8(a) program prior to 1980, Congress enacted Public Law 96-481, October 1980. This law required the SBA to negotiate with each firm in the portfolio, and each new firm entering the program a fixed period of time to participate. The law required that SBA establish graduation dates for all firms in the Section 8(a) program within eighteen months of the date of enactment, or by April 1982.

Through regulations, SBA established a system of fixed program participation terms (FPPTs) which limited a firm's participation in the program to an original term of up to 5 years with a possible two-year extension. Following full implementation of these regulations, concerns were raised that large numbers of firms graduating from the program under the FPPT system would go out of business because they would no longer have 8(a) contract support. The Committe heard horror stories that as many as 400 firms would go out of business as a result of the FPPT.

Partly in response to those concerns, in March 1983 the Committee held an oversight hearing on the implementation of federal minority assistance programs. The principal witnesses at this hearing were the heads of the two agencies with primary responsibilities for federal minority business programs, the Administrator of the SBA and the Secretary of the Department of Commerce. During the hearing, the Secretary and the Administrator presented a comprehensive proposal for promoting minority business development. One important element of their overall game plan was a transition program for 8(a) graduating firms to be administered by both MBDA in the Department of Commerce and the SBA. Under this transitional program, two years prior to a firm's graduation date the SBA would submit to MBDA the names and other information relating to each firm. Through its nationwide network of business development centers, MBDA would then contract prospective graduates and begin to prepare them for graduation by developing contracting opportunities in the commercial marketplace, either government contracting or with private companies. An Interagency Agreement was signed by SBA and MBDA to coordinate their activities, for example, by helping prospective 8(a) concerns prepare their application for the program. See Appendix D, Interagency Agreement.

Since the 1983 hearing, the Committee has been concerned about the survival rate of program graduates and the operation of the transition program. In December 1983, for example, Committee staff visited a MBDA business development center (BDC) in Seattle, Washington. In a letter to the Secretary of Commerce and the Administrator of SBA, Senator Weicker wrote of his concern after hearing the Committee staff report that:

> (a) The BDC was totally unaware of the interagency agreement between SBA and MBDA that had been made more than 6 months earlier;
>
> (b) No steps had been taken to contact the 8(a) graduates in that region;

(c) SBA and MBDA district offices had not met to discuss implementation of the transition proposal.

Since then, Committee staff has come to understand that the transition plans presented at the hearing have not been implemented by most MBDC's.

Prior to the enactment of Public Law 96-481, from 1970-1980, SBA graduated about 200 firms from the 8(a) program in a 10-year period. Since enactment of the law, SBA has graduated more than 600 firms in about 4 years. To begin to evaluate the effectiveness of the 8(a) program as a vehicle for business development and to determine what has happened to firms since graduation, the Committee, on August 14, 1986, sent a survey to minority-owned firms that had graduated from October 1982 through February 1986. The survey solicited information on the profile of the firms, such as the percentage of minority ownership, primary line of business, and the participants' opinions and views on the strengths and weaknesses of 8(a) as a comprehensive business development program. This survey represents the Senate Committee's first attempt to (a) measure the impact of graduation on 8(a) firms, pursuant to Public Law 96-481; and (b) gather information from former participants as to the effectiveness of the 8(a) program in preparing minority businesses to survive in the private sector.

Chapter III.—Survey Methodology

A. MECHANICS

In creating and structuring the survey instrument, Committee staff met with SBA personnel responsible for administering the 8(a) program. Minority business associations were also contacted and asked to provide input and make recommendations for changes in the initial draft of the survey. The Senate Service Department printed and produced the final survey instrument. The Congressional Research Service (CRS) of the Library of Congress provided assistance in the formulation of questions and statistical analysis, along with the Senate Computer Center, which also tabulated results and provided graphics and annotations.

The Committee relied on computer listings provided by SBA's Central Office for the most current addresses of graduated firms for the initial mailing. In addition, SBA's ten Regional offices provided the Committee with information on each of the graduates from a pre-survey questionnaire that was also created by Committee staff and SBA personnel. Unfortunately, a number of the addresses were out-dated or inaccurate, and lists of graduates provided by Central Office were in many cases different than those from Regional Offices. As a result, Committee staff expended an unexpectedly high number of man-hours seeking current information and updating lists in order to reduce the deluge of "Return to Sender" or "No Forwarding Address" letters that were returned after the initial mailing.

The survey was mailed, with an attached letter of explanation and appeal signed by, then Chairman Weicker and Ranking Minority Member Bumpers on August 14, 1986. The sample included a total of 461 firms that had left the program in a 4-year span from October 1982 through February 1986 under a fixed program partici-

pation term (FPPT) pursuant to Public Law 96-481.[1] Three subsequent mailings followed, and telephone calls, where numbers could be found, were made to companies in the sample to urge a response. The final response rate for the survey was 38 percent as presented in Figure B.

Figure B

SBA region [1]	Total received	Total sent	Total response rate (percent)	Total return to sender	Total no response
	A	B	(A÷B × 100)		
I	19	40	48	10	11
II	16	41	39	10	15
III	35	111	32	40	36
IV	23	55	42	8	24
V	5	30	17	5	20
VI	25	51	49	11	15
VII	5	14	36	4	5
VIII	11	22	50	3	8
IX	24	58	41	11	23
X	14	39	36	13	12
Total	177	461	38	115	169

[1] See Appendix C for a summary of regional statistics and states located in each of the ten regions.

As mentioned earlier, the number of "Return to Sender" or "No Forwarding Address" letters that came back to the Committee was inordinately high after the first mailing. The number was finally reduced to 115 after three mailings to try to reach the firms.

Committee staff then made a final effort to locate the 115 firms by telephone, even to the extent of calling private homes where a phone number could be found. The final outcome was that 89 firms were classified "unreachable" or "unlocated". Of those reached, 14 were still in business and 12 said they were no longer operating.

The Committee received "No Response" from 169 firms that presumably had received the survey. In order to present as complete a picture as possible of the status of all firms in the original sample, these businesses were also contacted by telephone by the Committee staff. Although surveys had not come back as "Return to Sender" from this group, 31 could not be reached by telephone; 119 firms were still operating and 19 were out of business. See Chapter IV, Section C for more detail on the total "Out of Business" rate of 8(a) firms.

B. LIMITATIONS

The findings presented in this report represent a summary and analysis of the perceptions and opinions of the respondents as to the effectiveness of the 8(a) program in providing business development assistance and preparing these firms for the competitive marketplace. Thus, the scope of inquiry of the survey included only those questions that Committee staff believed, in the final analysis, would best provide pertinent information in these areas.

[1] The total number of firms included in the initial sample was 497, but was reduced to 461 because the mailing list contained firms that were still in the program, others that left prior to enactment of Public Law 96-481 and duplications.

It should also be kept in mind that information from respondents was accepted at face value. Committee staff did not attempt to check the accuracy or validity of financial or other numerical data provided. The one area of exception was graduation dates because of inconsistencies between the SBA master computer print-out and the recollection of the respondent. In most cases, however, dates from each source coincided.

Considering these limitations, the questions included in the survey were structured to gather information in the following categories:

A. General Information, including ownership, ethnic origin, number of years in the 8(a) program and graduation date;

B. Profile of firm, prior to and since graduation, in terms of primary products or services and number of employees, and sales and assets since graduation;

C. Experience of contractor while in the program and reaction to the responsiveness of its various components, including 8(a) contract awards, management and technical assistance and financial assistance.

D. Experience of contractor since graduating from the program in terms of contracts received from federal, state, and local agencies as well as from the private sector, contact made and support received from SBA and MBDA since graduation;

E. Current operating condition of the firm, future growth, most severe problems and the impact of graduation on the firm's well-being; and

F. Additional comments and recommendations on any aspect of the SBA 8(a) program.

After gathering the results and carefully weighing limitations and the problems incurred in the mailing process, Committee staff and research assistants concluded that the survey findings were consistent, factual and based on good data. Supporting this conclusion, several questions, although presented in different modes such as essay, multiple choice or ranked response, treated the same issue. When results were tabulated, consistency in a firm's responses on that issue was apparent in most cases throughout the survey regardless of the mode in which the questions were structured. Additionally, 177 firms' responses do represent the most complete information available on 8(a) graduates, and will be a factor in making recommendations for restructuring, maintaining or eliminating certain aspects of the 8(a) program. The Committee appreciates the time taken by a number of respondents, not only to provide detailed answers, but also to attach letters to the survey, further expressing their concerns or praise for the program.

Chapter IV.—Major Survey Findings

This section presents the major findings of the survey. These results were taken from tabulations, open-ended questions and attachments where trends were established. Committee comments and graphics [2] when indicated, follow each finding. The order of

[2] Graphics used throughout the report are based on questions asked of 8(a) program graduates in the survey which is printed as Appendix A. The number of the question appears at the upper left corner of each graph, for example, Q 3 refers to question three of the survey.

presentation does not reflect a ranking or rating of the issues. A total tabulation of survey results indicating responses to each question, with annotations, is provided in Appendix A of this report.

A. INDUSTRY PROFILE OF 8(a) GRADUATES: MAJORITY OF 8(a) FIRMS REMAIN IN SERVICE AND CONSTRUCTION INDUSTRIES

According to survey returns, the industries in which 8(a) graduates are largely concentrated are service and construction. Forty percent of the respondents listed construction or related fields as their primary product or services, while 20 percent of the respondents were in janitorial or maintenance services; another 11 percent were in professional/consulting services. Only 3 percent of the firms listed manufacturing and 8 percent indicated automated data processing or computer services although these are areas of significant federal government contracting activity. Firms have generally continued in the same line of business after graduating from the 8(a) program.

See Figures 1a and 1b.

10

Figure 1a

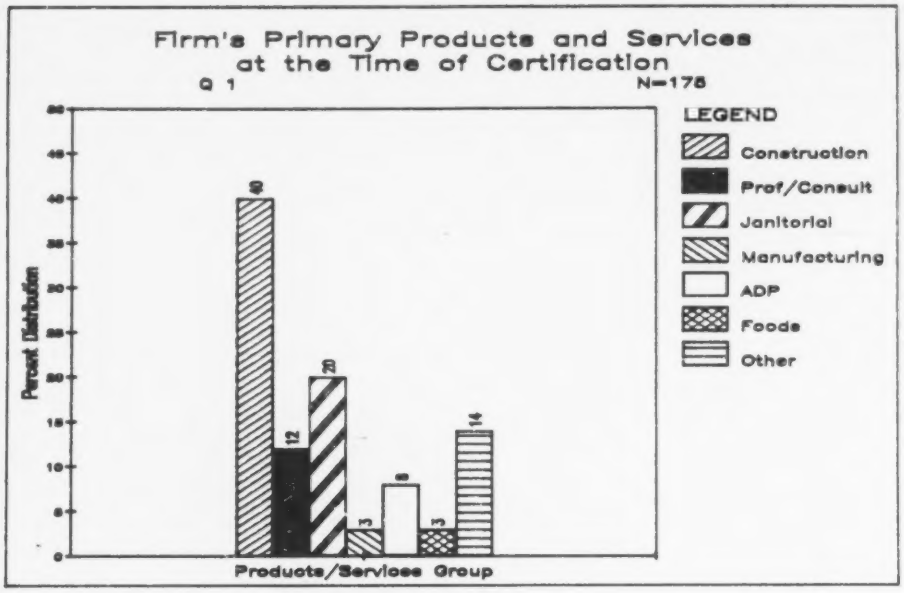
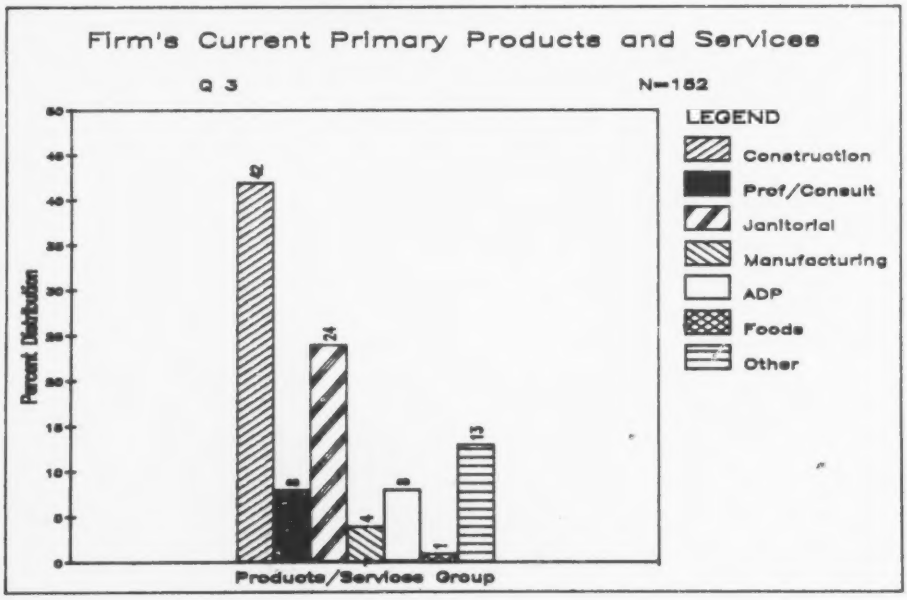


Figure 1b



Comments:

Over the years, Congress has expressed concern about the industry distribution of the 8(a) portfolio firms. This finding supports the long standing impression that the majority of firms in the 8(a) program has remained in construction, janitorial and maintenance or service industries. This distribution of the portfolio, however, does reflect the composition of the larger minority business community which also is concentrated in the construction and service industries. Since the 8(a) program offers an opportunity for minority businesses to enter the nation's economic mainstream, the Committee is particularly concerned about the small number of businesses in manufacturing and high-tech areas.

A major congressional effort to increase or expand industry penetration by minority small business has been the 8(a) pilot procurement program. Orginally authorized under Public Law 95-507, the pilot program allows SBA to select more sophisticated, large volume, long-term contracts from one federal agency, contracts which would not have been set aside in the regular 8(a) program. From 1979-1982, the program operated with the Department of the Army as the pilot agency; the program was authorized for a civilian agency from 1983-1985 and the Department of Transportation was designated. In order to allow sufficient time to test the program in a civilian agency, in 1986 the Congress reauthorized the pilot for an additional two years and recommended that it continue with the Department of Transporation. The bill was signed into law by the President on October 27, 1986, as Public Law 99-567.

The current SBA 8(a) portfolio reflects an industry distribution similar to that of survey respondents which further underscores the need to continue the pilot authority. The Committee believes that the pilot program provides SBA with a valuable tool and expects that with this extension Congress will be provided the necessary empirical data to determine if the pilot authority should be maintained or expanded. With a shift in program procedures, the types of contracts offered could well reflect a more balanced 8(a) portfolio because of greater penetration or breakthroughs in other industries, such as manufacturing and computer technology.

Another possible source for broadening opportunities in nontraditional industries for 8(a) firms is the FY 1987 Department of Defense (DOD) Authorization Act. Public Law 99-661, Section 1207, requires DOD to set aside no less than 5 percent of the Department's appropriations for procurement, research, development, testing and evaluation (RDT,E) and military construction for contracts to be awarded to small business concerns owned and controlled by socially and economically disadvantgaed individuals and other minority institutions. This historic mandate could result in minority firms receiving more contracts in nontraditional areas, such as computer systems integration, software design or other hi-tech requirements.

B. HEALTHINESS OF GRADUATED FIRMS

The survey posed a number of questions to assess the "healthiness" of firms that have graduated. Healthiness includes the owner's perception of how well the company is doing, combined

with quantitative information on profitability, as reported in the survey. Most owners said they were doing well enough to get by and, in some cases, doing very well. When asked to describe the current operating condition of their business, 22 percent said they were doing very well and 42 percent said, "Doing well enough to get by". Asked in what condition they expected their firm to be by the end of 1987, 44 percent of the owners who responded said, "Better" and 19 percent said, "The same"; only 13 percent felt they would be worse off and 24 percent were not sure.

A firm's healthiness was further analyzed by comparing the owner's opinion with more objective data such as the number of employees, total annual sales, assets, net worth and working capital.

See Figures 2 and 3.
See Appendix A, page 2.
See Appendix B.

Figure 2

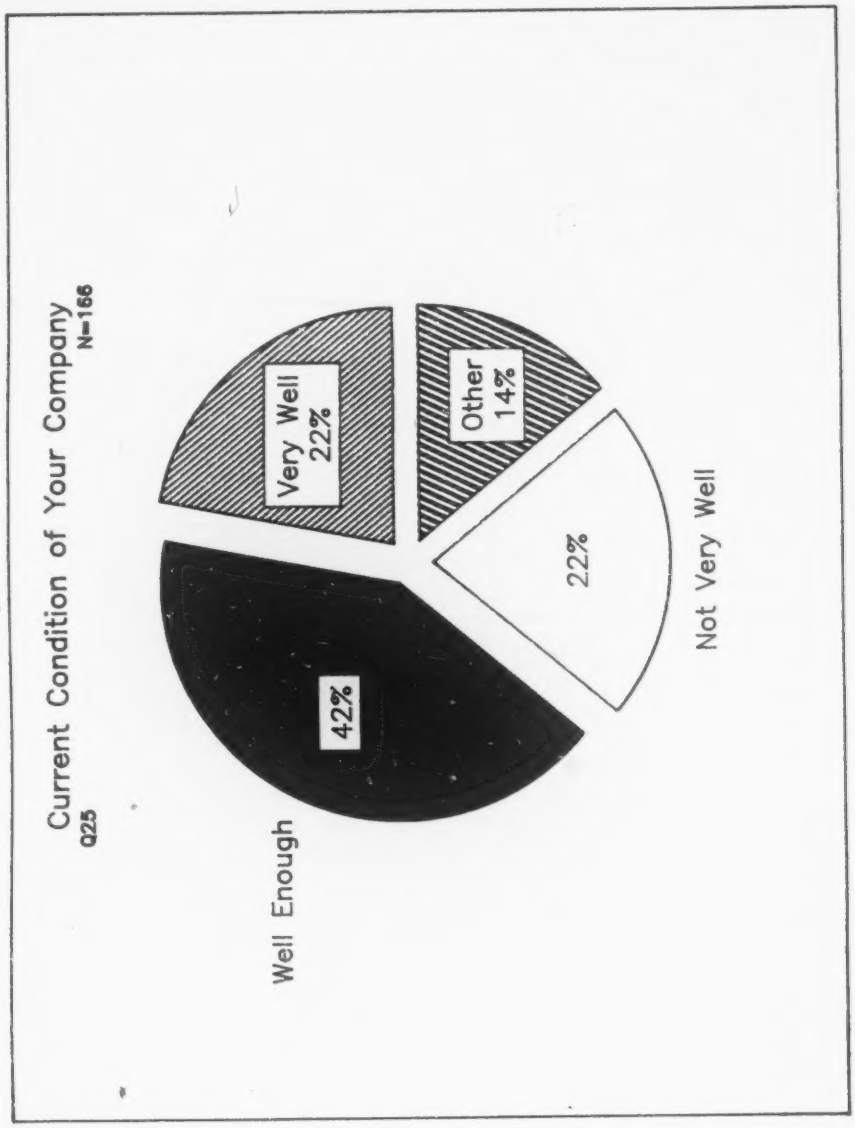
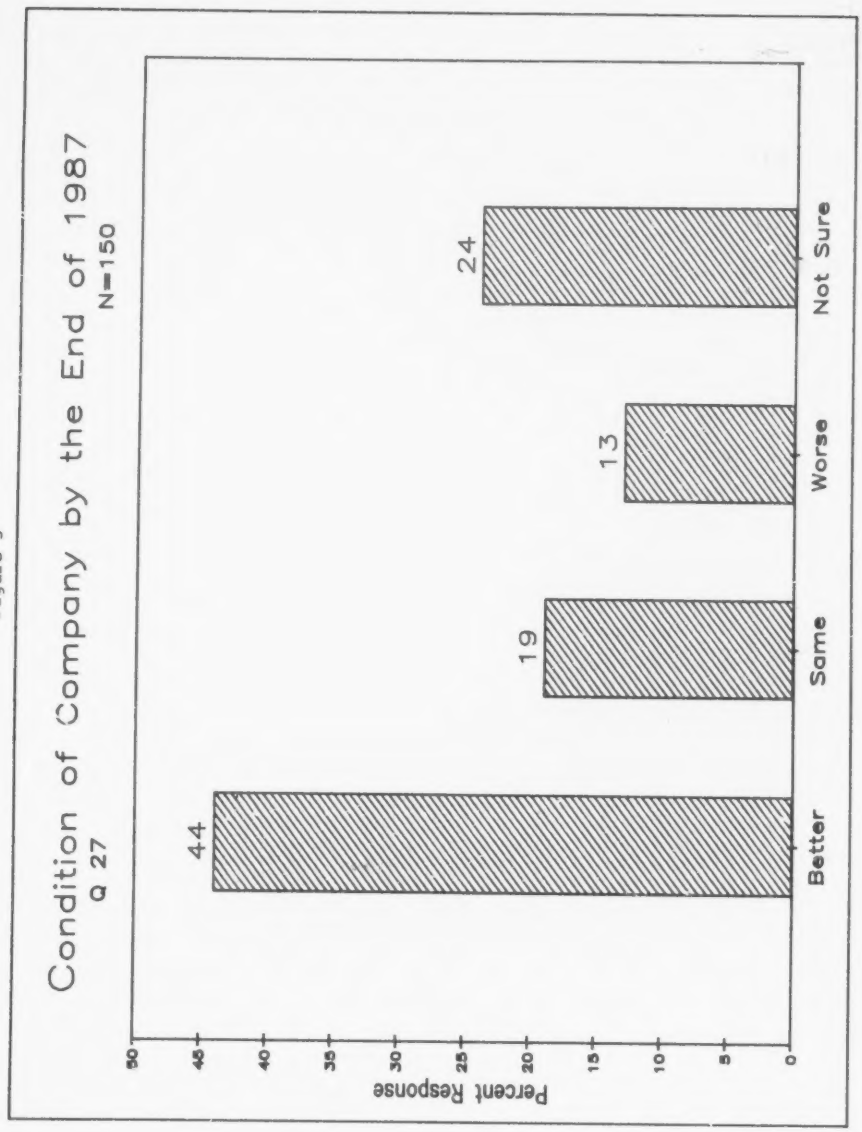

Current Condition of Your Company
N=166
Q25
Well Enough
42%
Very Well
22%
Other
14%
22%
Not Very Well

Figure 3


Condition of Company by the End of 1987
Q 27
N=150
Percent Response
0
5
10
15
20
25
30
35
40
45
50
44
19
13
24
Better
Same
Worse
Not Sure

Comments:

It was determined in a majority of the responses that an owner's perception of the firm's well-being was supported by the financial information given. Stated otherwise, on a scale created to rank the healthiness of firms from high to low, there was a significant correlation between the operating condition of a firm as subjectively measured by the owner and the firm's net profit, total assets, working capital and net worth. Owners that felt they were doing very well fell at the upper end of the scale, and those that felt they were not doing well fell at the lower end. Firms that said they were just getting by mostly fell in the middle. However, in the categories of net profit and total sales a large percentage of this group ranked at the upper end of the scale.

In comparing the financial profile and the number of employees of the firms that fell in the middle and top groups with national statistics for minority owned firms, the outcome was quite favorable for the majority of the survey sample that responded. These firms fell in the upper quartile of the nation's minority owned firms, when compared to statistics from "The President's Report: The State of Small Business, 1986." These results lead the Committee to conclude that many 8(a) firms are surviving in the private sector after graduation in spite of intense competition, financial problems, possible discrimination and other factors that have historically plagued minority small businesses. It should be noted that many of the respondents that comprise this group of surviving and, in some cases, flourishing firms, strongly criticized the 8(a) program for its failure to deliver management and technical support, provide a transitional program or provide sufficient financial aid, such as Business Development Expense (BDE) or advanced payment loans when they were participants.

It remains clear to the Committee, that in order for a larger number of 8(a) firms to enjoy these benefits, the program must be more efficiently managed and monitored with closer attention given to each firm's development. This would ensure more participants a greater chance of success after graduation, which is the goal of the program; survival should not be happenstance.

C. OUT OF BUSINESS RATE OF GRADUATED FIRMS

The Committee found that only 18 out of the 177 owners responded that they were out of business. However, Committee staff took extensive measures to collect information on all 461 firms in the original sample in order to present a more complete picture of the success or possible failure of all of the graduates. For example, repeated mailings were made to firms that either did not respond or for whom the postal service reported mail could not be delivered. SBA was also asked to assist the Committee in finding firms and at least confirm whether they were still operating. Furthermore, repeated attempts were made to reach non-responding firms by telephone. Finally, when all other avenues were exhausted, Dun and Bradstreet was asked to check its files for the number of firms they believed were still operating.

Taking all of these efforts into account, the Committee is still only able to estimate the likely number of graduated firms that are not operating today.

- 97 of the 461 firms (or about 21%) are definitely not operating.
- An additional 42 firms, based on evidence presented by Dun and Bradstreet or the efforts of Committee staff, may also possibly be out of business. If these are added, the total becomes 139 (or about 30 percent).

Comments:

The Committee has concluded that at least 21 percent of the graduated firms are out of business, but as many as 30 percent *could* be out of business. Based on all of the efforts made to contact owners, information gathered and input from Dunn and Bradstreet, the Committee believes the true Out of Business Rate to be closer to the upper limit of 30 percent. However, it should be noted that it is possible that some of these firms could have changed their address, name and/or telephone number. In that case, if appropriate forwarding instructions are not currently maintained by the Postal Service or if the telephone company no longer informs callers of the new number, some of these firms may still be in business. It seems very doubtful, however, that a business that continues any level of operation would not make provisions for forwarding of mail, referencing of telephone calls or have a need to establish credit references.

The Committee continues to be concerned about the probable Out of Business Rate of graduates and the high level of criticism lodged against various aspects of the 8(a) program by many participants. The thirty percent of the total survey sample that may be out of business, coupled with twenty-two percent of the respondents who indicated they were not doing well are troubling statistics. Moreover, the perception of many graduates that the program did not significantly contribute to their ability to survive is a clear indication that the program is not effectively or consistently developing or preparing businesses for the competitive marketplace and suggests that fundamental changes in the program are needed.

D. THE 8(a) PROGRAM IS MAINLY VIEWED AS A CONTRACTS PROGRAM, NOT A BUSINESS DEVELOPMENT VEHICLE

A large majority of survey respondents said that the 8(a) program was most helpful in providing government contracts but least helpful in providing management, technical, or financial assistance in the development of their firms. A major objective of the survey was to gather information on the effectiveness of the 8(a) program as a business development vehicle including management, technical and financial assistance, and a number of different questions were included for this purpose. The responses showed a clear trend that the 8(a) program fell short in its delivery of these services to participating firms despite availability of contract support. For example, 75 percent of firms rated government contracts as very helpful compared to 24 percent who rated management assistance or 16 percent who rated training as very helpful. When asked to describe the strongest aspect of the 8(a) program in an essay ques-

tion, more than 100 respondents mentioned contracts; the weakest aspects, as described by most respondents, were management, technical, marketing and financial assistance or a combination.

See Figures 4 and 5; 6a and 6b.

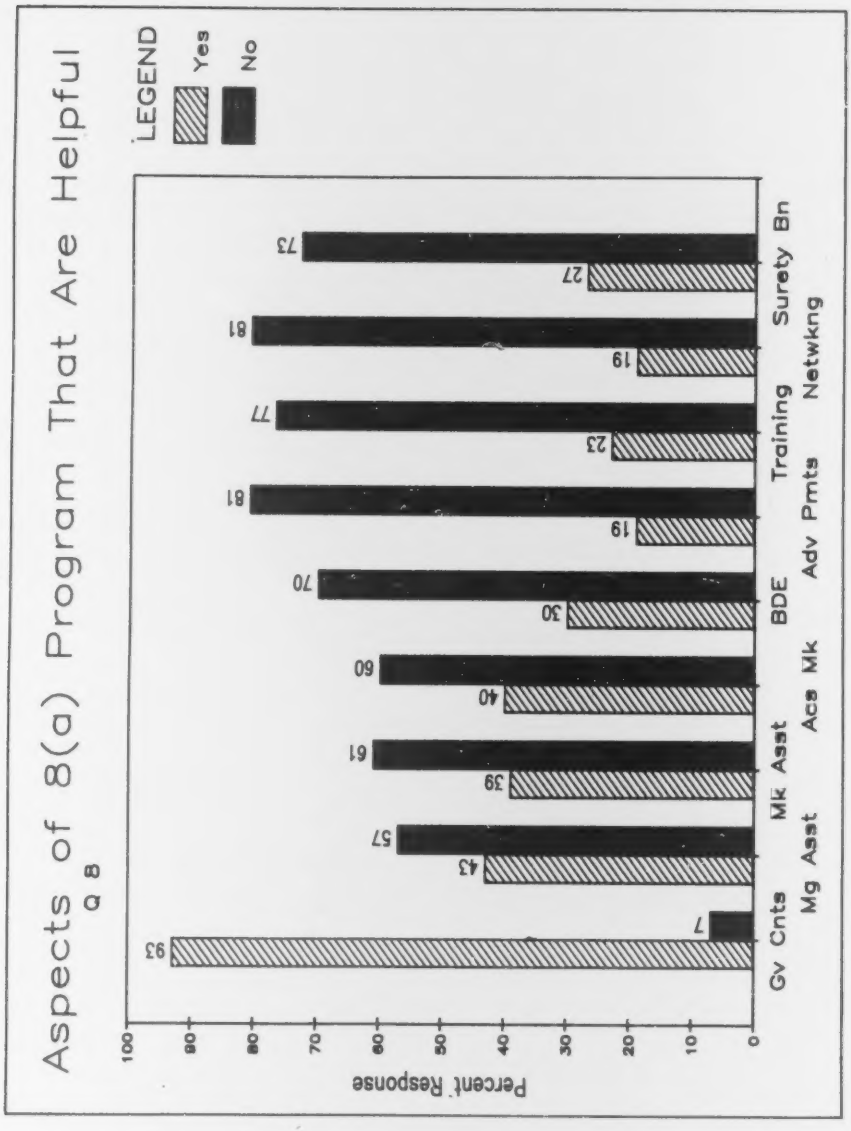

Aspects of 8(a) Program That Are Helpful
Q 8
LEGEND
Yes
No
Percent Response
100
90
80
70
60
50
40
30
20
10
0
93
7
57
43
61
39
60
40
70
30
81
19
77
23
81
19
73
27
Gv Cnts Mg Asst
Mk Asst
Acs Mk
BDE
Adv Pmts
Training
Netwkng
Surety Bn

Figure 4

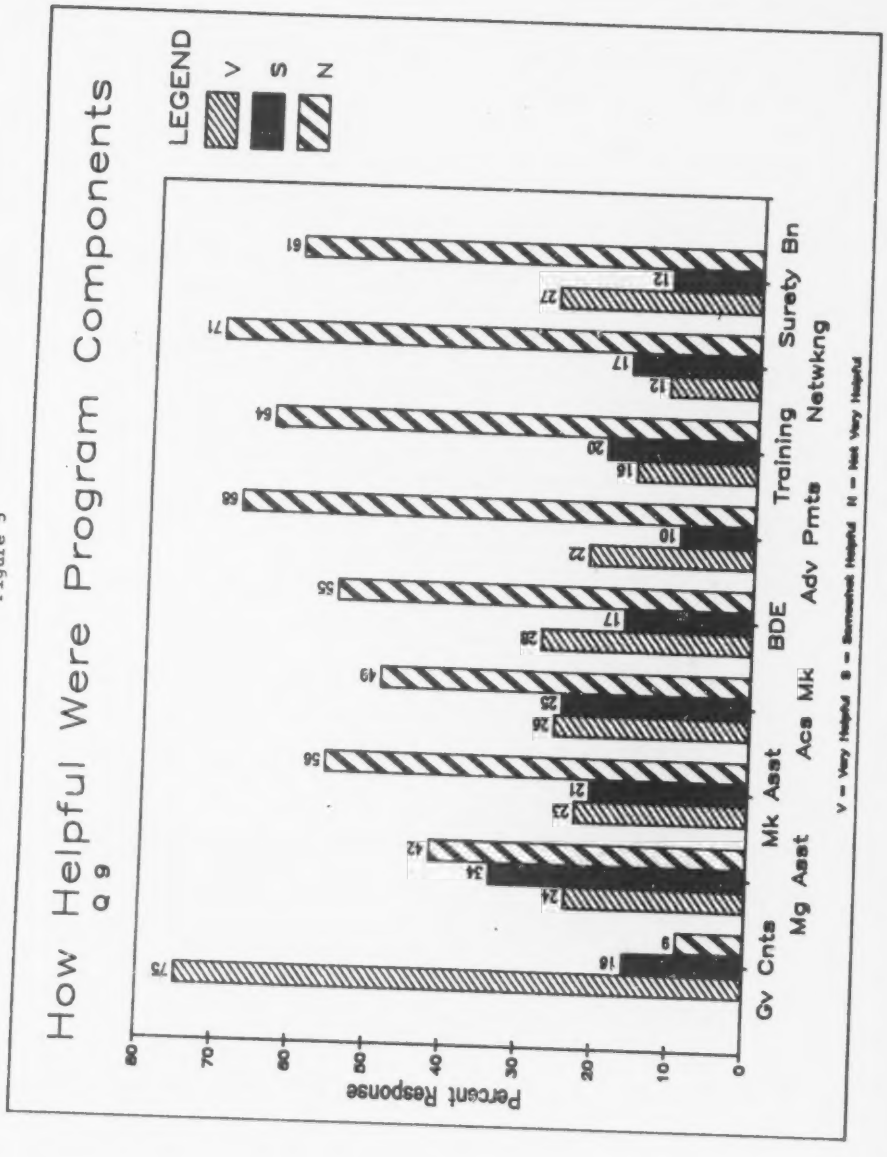

How Helpful Were Program Components
Q 9
LEGEND
V
S
N
Percent Response
0
10
20
30
40
50
60
70
80
Gv Cnts
Mg Asst
Mk Asst
Acs Mk
BDE
Adv Pmts
Training
Netwkng
Surety Bn
V = Very Helpful S = Somewhat Helpful N = Not Very Helpful
75
16
9
24
34
42
23
21
56
26
25
49
28
17
55
22
10
68
16
30
64
12
17
71
27
12
61

Figure 5

Figure 6a

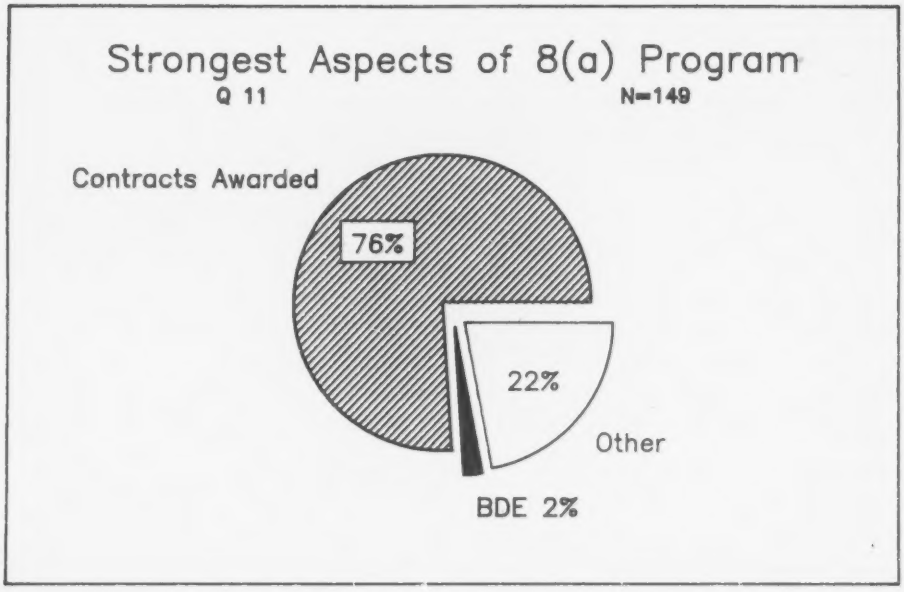
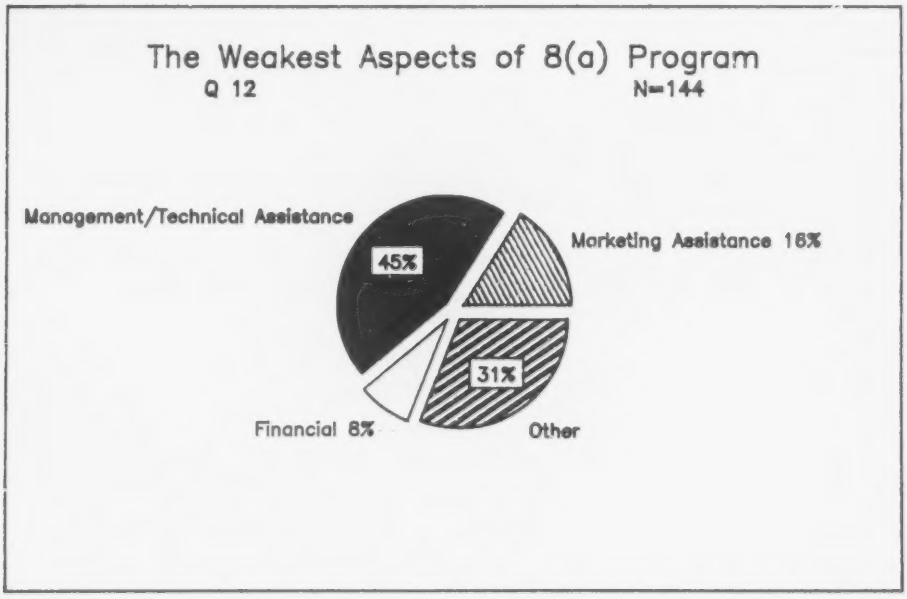


Figure 6b



Comments:

Since the enactment of Public Law 95-507, it appears that the 8(a) program has basically remained a contracts program with management and technical support continuing to be its Achilles' heel. This persistent problem greatly concerns the Committee, especially in view of legislative actions Congress has taken to correct this weakness by restructuring the 8(a) program in the direction of business development. These actions include the establishment of the Office of Associate Administrator for Minority Small Business and Capital Ownership Development (MSB/COD), under Public Law 95-507, which was given the authority to provide management and technical assistance to 8(a) firms, under Section 7(j)(10) of the Small Business Act. This survey's results indicate that this authority has not been effectively utilized by SBA.

It was clearly the intent of Congress that SBA should assist each firm in developing a comprehensive business plan which sets forth the firm's goals and objectives and provides services such as loan packaging, financial counseling, marketing and management assistance as are necessary to help the firm to grow. The agency should also establish regular monitoring and reporting systems to measure adherence to the firm's business plan as well as analyze and report, in specific time frames, the success or failure of all firms in the program. According to comments of respondents, very little of the focus on a firm's business plan, as envisioned by the law, has taken place. A firm located in the Midwest, which has gone out of business and was the subject of bankruptcy proceedings, made very pointed comments on what should be done to improve the program.

> Require a realistic business plan at the outset. . . . Once the plan is approved, the contractual and financial assistance requested of SBA cannot be *promised* in terms of best effort. It must be *delivered.* SBA must closely monitor the firm to ensure that good managerial, marketing and sales techniques, along with an adequate accounting system, are implemented and adhered to. SBA must also insist that private sector goals are met.

In terms of delivering the assistance just described, this entrepreneur stated:

> I think, at a minimum, structured seminars or strategic planning, marketing, sales, quality control, cost benefit analysis, financial analysis, and resources allocation ought to be given . . . on a regional level, in lieu of the management and technical assistance programs now given. These seminars should be conducted in an educational environment . . . [and] legal assistance should be made available to review contracts, leases and other agreements that are vital to a minority firm's existence.

A Northeast contractor succinctly suggested that to improve the program: ". . . Business development [must be] a mandatory requirement for 8(a) contractors. This business development should include all aspects of business, money management, marketing, etc."

In relating his personal efforts to survive, another respondent stated:

> SBA could assist firms by providing substantial marketing assistance and training in the firm's certified Standard Industrialization Classification (SIC) code or area of endeavor. My experience was a contract here, a contract there and none in between. Personally, I had to do pioneering educational research and at the same time, go out and get odd jobs to stay in business.

While providing contracts for participants is an essential component of the program, it is but one part of the total picture of a firm's business development. In making the program work, the Committee believes the Office of MSB/COD must focus greater attention on each firm's business plan, so that the negotiated goals and objectives are as vigorously met in providing management and technical assistance as contracts.

E. THE PROGRAM LACKS A TRANSITIONAL STRUCTURE

The overwhelming sentiment of many respondents was that they were simply "dropped" from the program at the conclusion of their fixed program participation term; that there was no transitional structure to prepare them for leaving the program and entering the competitive marketplace. Although a transitional structure and phase-out program were outlined by the Secretary of Commerce and the Administrator of SBA in the 1983 hearings before the Committee, 72 percent of the firms said they had received no assistance from MBDA and only 6 of the firms that responded to the question described MBDA assistance as very helpful.

See Figures 7 and 8.

Figure 7

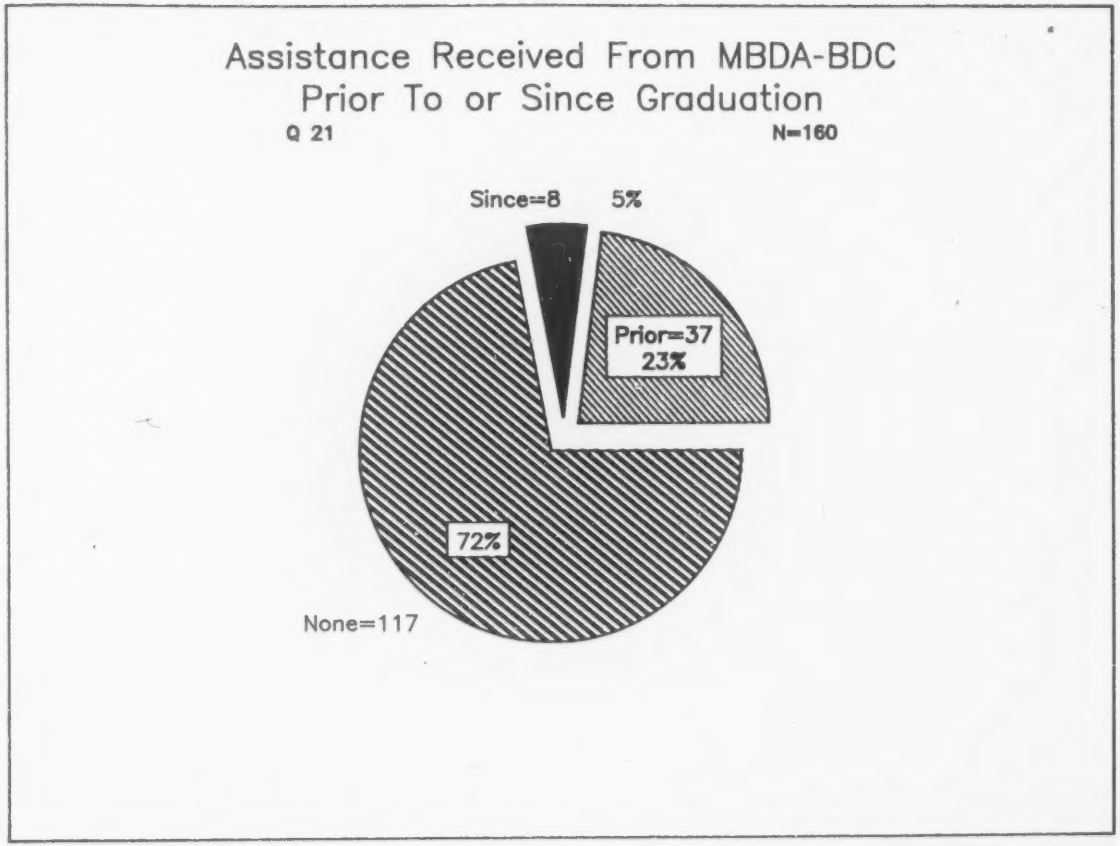
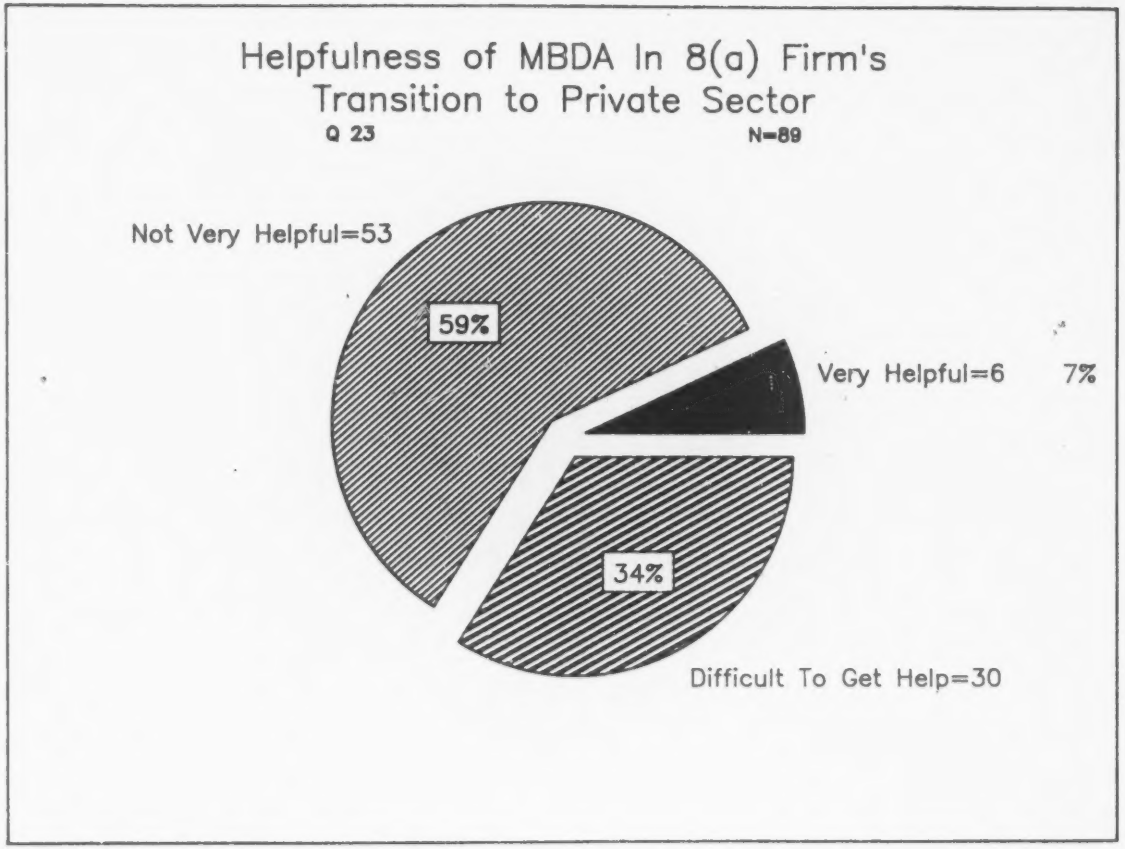

Assistance Received From MBDA-BDC
Prior To or Since Graduation
Q 21
N=160
Since=8
5%
Prior=37
23%
72%
None=117

Figure 8


Helpfulness of MBDA In 8(a) Firm's
Transition to Private Sector
Q 23
N=89
Not Very Helpful=53
59%
Very Helpful=6
7%
34%
Difficult To Get Help=30

Comments:

In March 1983, the Committee held a hearing at which the SBA Administrator and the Secretary of Commerce testified, along with the Director of the Minority Business Development Agency. A program was presented to the Committee by the witnesses wherein the approximately 100 Minority Business Development Centers, which operate under grants from MBDA, would begin to work with firms about to graduate from the program. Under this plan, 2 years before a firm was due to graduate, SBA would send to MBDA the business plan and other information on the prospective graduates. MBDA was to forward the information to the closest Business Development Center (BDC), which would contact and begin to work with the firm to develop plans for marketing contracts prior to graduation. This "program of transition" was set forth in an Interagency Agreement later entered into between SBA and MBDA.

Though few had received assistance, sixty percent of the respondents to the survey said that they were aware that a program did exist. Most of the firms believed that they needed the assistance of the transitional program but found the program, as outlined in the hearing, not effectively implemented and, thus, not very helpful to them. One respondent who said that he had received assistance from a BDC prior to graduation for the design of a marketing brochure indicated that the task was not completed. He felt that he definitely needed the center's assistance but stated that there was a "lack of follow through by MBDA . . . [In this region] the commitment lacks sincerity and priority".

In view of the program presented by MBDA and SBA at the Committee's 1983 hearings, the Committee is very concerned that for this first group of graduates there has essentially been no transitional program. All indications are that very little has been done to ease the shock of graduation and the program, as presented, has never been fully implemented.

F. IMPACT OF GRADUATION ON FIRMS

The impact of graduation on many of the survey respondents produced mixed results. When asked directly what impact graduation had on their firm, the majority of the respondents indicated a negative impact. Fifty-eight percent of the respondents to this question said graduation had a devastating effect on their business and 51 percent said their firm failed to grow after graduation.

On the other hand, 18 percent of the respondents felt their firm was not likely to go out of business because of graduation, and 61 percent said they were becoming competitive in the private sector. In addition, 57 percent said their firm continued to receive government and commercial contracts. Government agencies awarding most federal contracts were the Department of Defense (DOD), General Services Administration (GSA) and the Department of Transportation (DOT).

See Figures 9a and 9b; 10a and 10b.

See Figure 11.

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Figure 9a

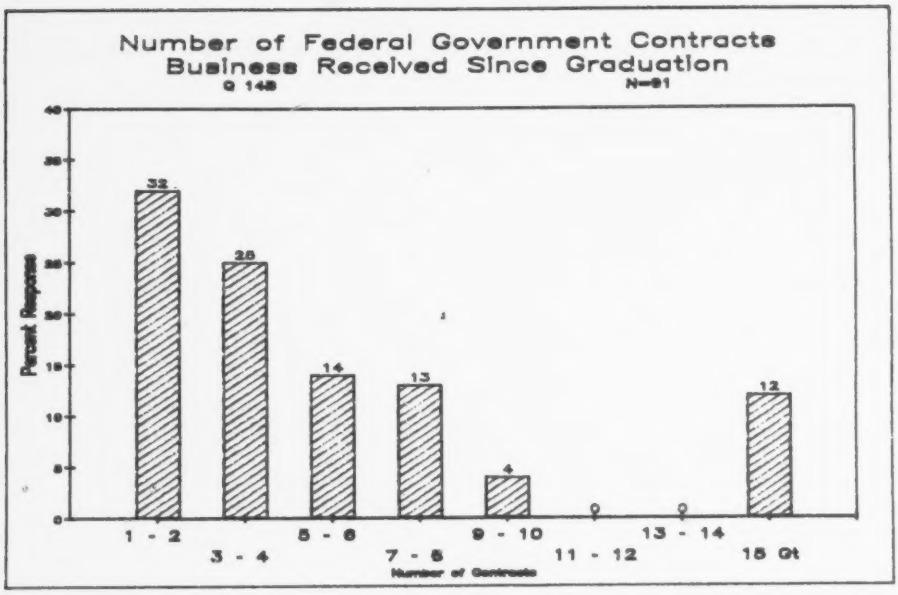


Figure 9b

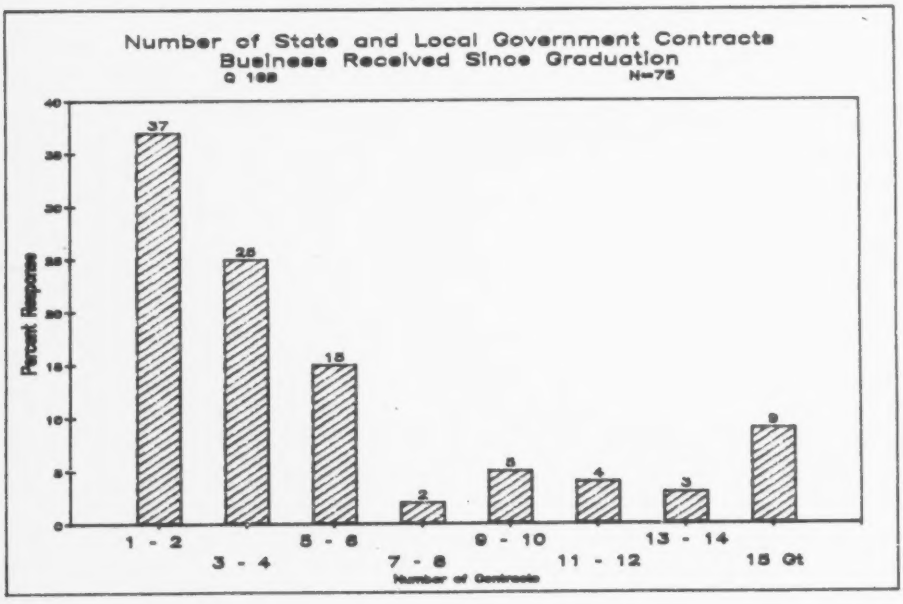


Figure 10a

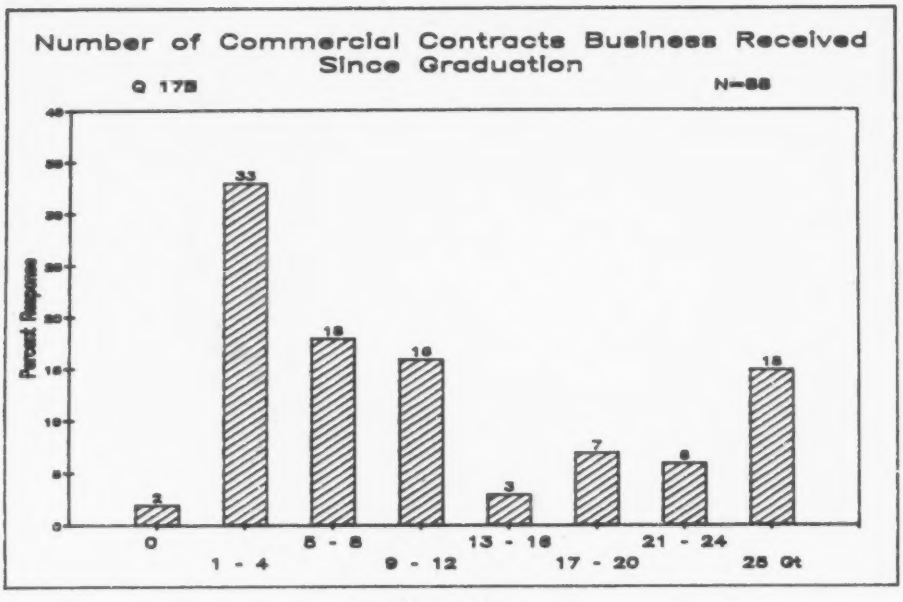


Figure 10b

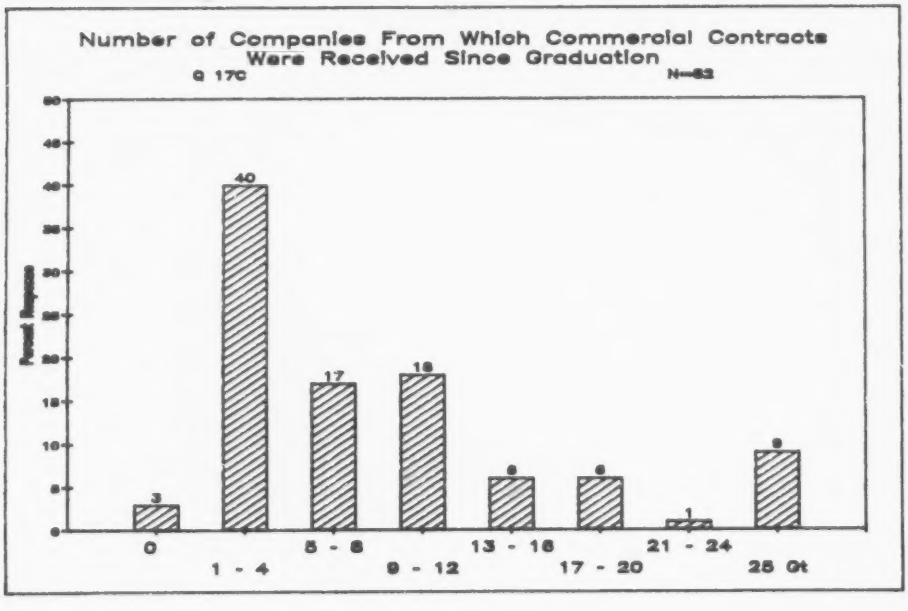
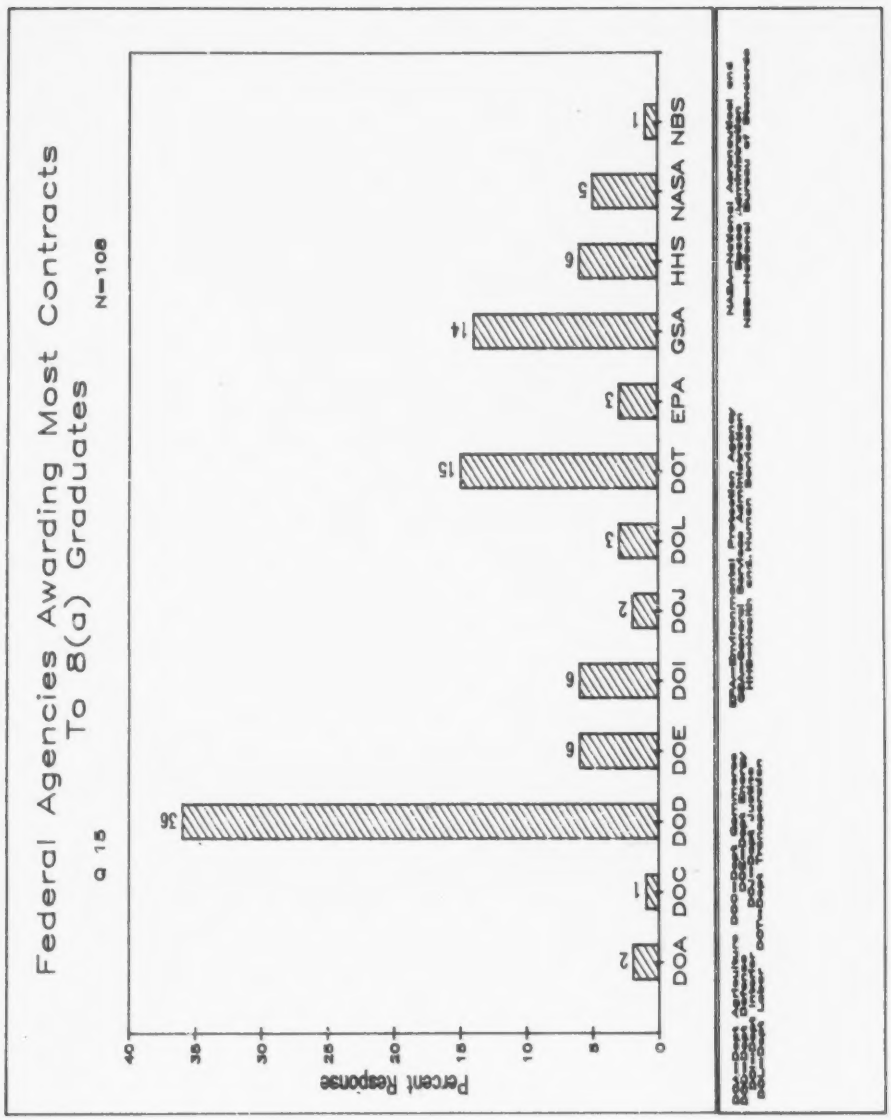


Figure 11


Federal Agencies Awarding Most Contracts
To 8(a) Graduates
Q 15
N=106
Percent Response
0
5
10
15
20
25
30
35
40
2
1
36
6
6
2
3
15
3
14
6
5
1
DOA DOC DOD DOE DOI DOJ DOL DOT EPA GSA HHS NASA NBS

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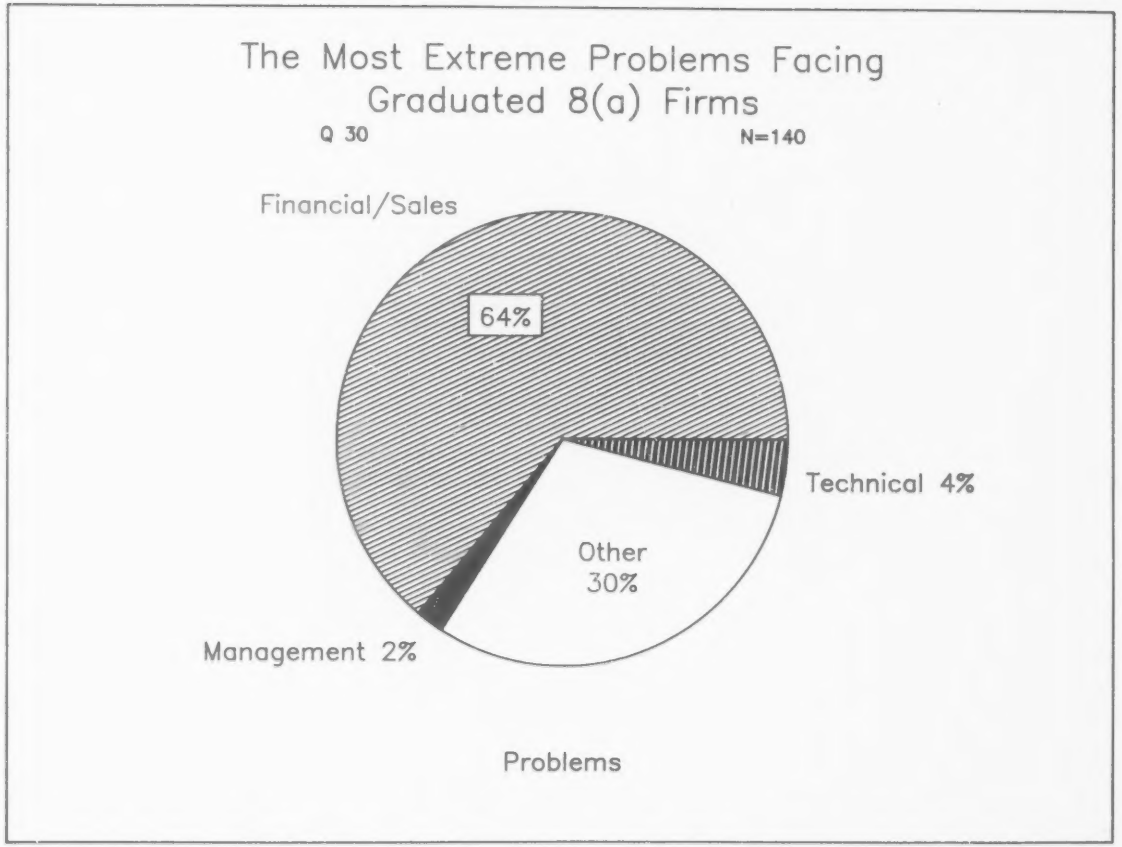
Comments:

These results do not provide the Committee with a clear basis for determining the actual impact of graduation on firms. It is obvious, however, that owners have mixed or negative feelings about graduation in spite of the fact that most who responded are now surviving and, in a majority of cases, expect to do even better. Perhaps it can thus be said that regardless of the perceived impact of graduation by owners, many do make it even if they felt they needed more time in the program, whether due to their own ingenuity or the fact that the program did provide certain business development skills that they otherwise would not have attained.

The obvious effect of graduation is that the firm can no longer receive no-bid contracts. Depending on the amount of 8(a) contracts that a firm had leaving the program, this can be devastating if the firm is not prepared to replace its 8(a) work with contracts from other sources. If this is the case, the firm's level of business activity suddenly plummets and the owner must face the shock of this loss. This is manifested in poor sales and marketing or other financial difficulties which most respondents said were their most pressing problems since graduating.

See Figure 12.

Figure 12


The Most Extreme Problems Facing
Graduated 8(a) Firms
Q 30
N=140
Financial/Sales
64%
Technical 4%
Other
30%
Management 2%
Problems

A good example of this dilemma is expressed by the owner of a janitorial and maintenance firm from the Midwest who said graduation had a devastating effect:

> . . . We were graduated without consideration of the fact that approximately 44 percent of our annual sales volume was 8(a) sales, and that an immediate termination (graduation) could be the undoing of the prior years of government assistance. We even had government agencies that wanted to write contracts with options in them beyond our graduation date but SBA wouldn't agree to it. Since that time, our profit and loss statement is in the RED (the first time in 10 years).

This owner further explained that since graduation in 1985 his firm has experienced problems of . . . "inadequate cash flow and poor sales due to the inability to replace 8(a) sales loss at graduation (22% of entire volume) and the 8(a) sales we will lose as other or remaining 8(a) contracts terminate. This volume is difficult to replace immediately."

This respondent echoes the opinion of many others who said the system of preparation for graduation was abrupt. But the positive side of this predicament, as viewed by the Committee, is that this owner and many of the other respondents express optimism for the future. When asked in what condition he expected his firm to be by the end of 1987, his response was "better" because, ". . . We are engaged in a very aggressive marketing and financial restructuring program that we expect to bear fruit by the end of 1987." Nearly 50 percent of the respondents also said "better" for various reasons that also suggested an optimistic outlook.

G. HOW LONG SHOULD A FIRM STAY IN THE PROGRAM

Firms were asked if they felt they had enough time in the 8(a) program; 64 percent said "No" and 36 percent responded "Yes". When asked what, in their opinion, was the optimum number of years for a firm to participate, the average response was 10 years. However, of the total number of respondents to the question, 51 percent of the firms did not suggest a number of years. Instead, many commented that graduation should not be determined by number of years, but on the basis of a firm's development.

Comments:

Since enactment of Public Law 96-481 and the mandate to establish definite graduation dates for participating firms, concerns have been expressed about the appropriate number of years a company should remain in the program. The Committee grappled with this issue in 1980. The original bill, introduced by Senator Robert Morgan of North Carolina, called for a statutorily established period of 5 years for program participation. During Committee mark-up on this bill by an amendment offered by Senator Weicker, the provision establishing 5 years was deleted. Instead of mandating a specified time frame for participation, the Congress delegated responsibility to SBA to establish the appropriate term. The law also specified that the term not begin until a firm received its first contract. Although SBA established the fixed program participa-

tion term of up to 5 years and no more than 7 (if an extension is requested and granted), the issue of an appropriate length of time has remained controversial.

Reasons given by firms that responded that the period of time in the program should be greater than the 7 years, which is now the limit, varied from personal experiences to more objective, well thought out administrative goals and strategies that the program should encompass, such as the following as outlined by one contractor.

> I believe 8-10 years are required for a minority business entrepreneur in government contracting to accomplish the following and to do them well:
>
> (1) Develop top management skills and experience;
>
> (2) Build a well functioning management team;
>
> (3) Develop and demonstrate successful contract capability;
>
> (4) Develop credibility in the market and a competitive edge in order to win 8(a) business; and
>
> (5) Achieve a track record of profitable operation.
>
> Most minority business owners are starting with little previous executive management experience; to have a viable business easily takes 8-10 years.

Another contractor stated, "10 years is enough time in the program if a firm is allowed to prepare for graduation; if this is not allowed, there should be no time limit."

For the many owners who did not give an optimum number of years, the following quotes sum up most of their responses:

> Establishing an optimum number of years for participation in the program is not a very effective manner in which to proceed. The first 3 to 5 years in the program are usually dormant in terms of receiving contracts . . . The program tenure should be divided into these phases:
>
> (1) The first period should involve management training and some initial contracting opportunities;
>
> (2) The second phase should involve concentrated contracting opportunities and marketing of both government and private sector;
>
> (3) Finally, a preplanned gradual phase-in-to-graduation period should be established to allow sufficient time to replace 8(a) contracts and there should be a follow-up assistance program implemented by SBA.
>
> Firms that have graduated but are still fulfilling option years on contracts let prior to graduation should be allowed to extend those contracts, either indefinitely or until a contract replacement schedule can be implemented.

Another contractor from a different industry said, "The 8(a) program should be designed for growth and not to satisfy a predesigned number of years. What is the point of assigning a number of years if the firm can't make it in the private sector; it should not be a numbers program, but a real down to earth development program."

The Committee will carefully weigh the survey responses on this issue and others in determining whether new legislation should be introduced or whether SBA should reassess the designated number

of years for program participation. Under existing law, it is possible for SBA to administratively modify the system of setting graduation dates. However, it should be noted that the majority of the firms that responded to the survey had been in the program prior to promulgation of the law and the FPPT, with an average tenure of about 9 years.

H. CONTRACT SOURCES AFTER GRADUATION

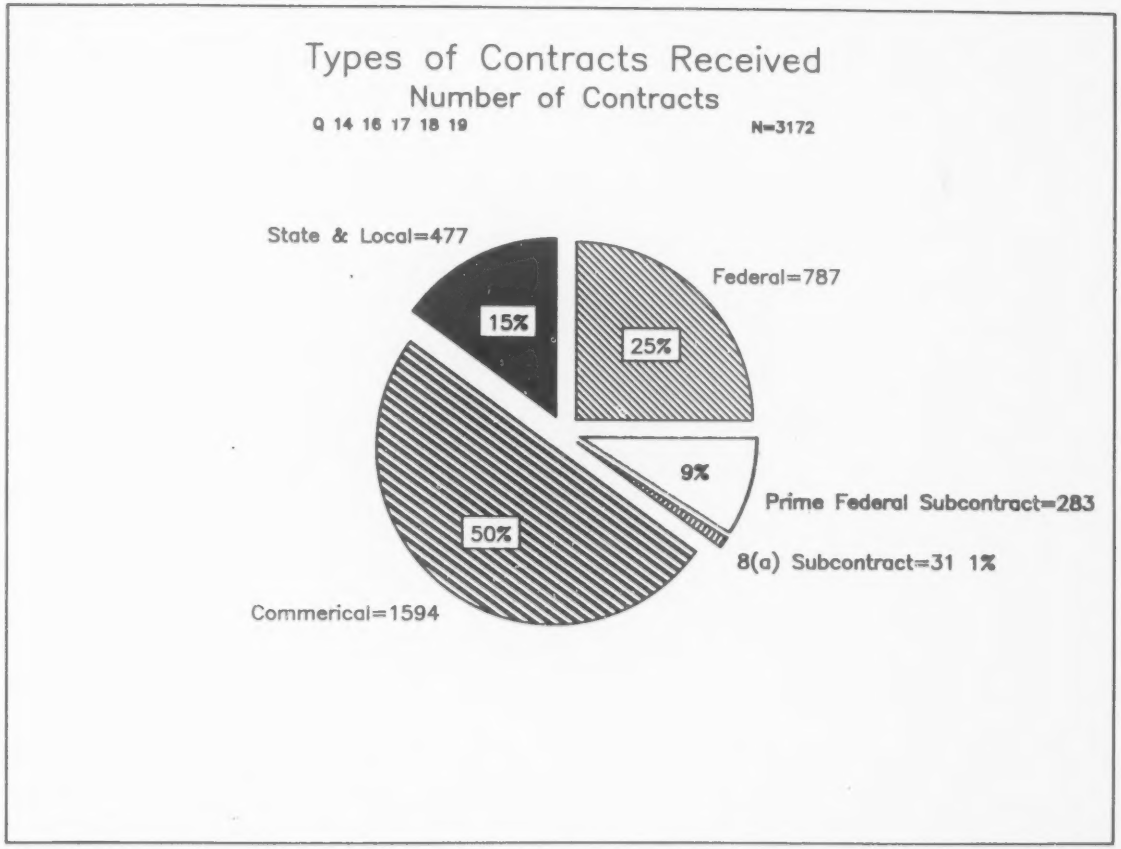
Some graduates indicated that they have continued to receive federal contracts and others indicated that a source of contracts has been state and local governments. But very few have become subcontractors to major prime contractors.

Comments:

Firms were asked a series of questions in order to determine their contract sources now that they are no longer in the program. More than 50 percent of the respondents indicated that they have received commercial contracts through the competitive bidding process. Ninety-seven firms said they have received federal contracts after graduation, most of which were awarded by agencies and departments which they had worked with before graduating from the 8(a) program, which suggests that they were able to establish good track records with these agencies while in the program. Other significant markets for graduates are state and local governments, according to 78 firms that responded.

See Figure 13.

Figure 13

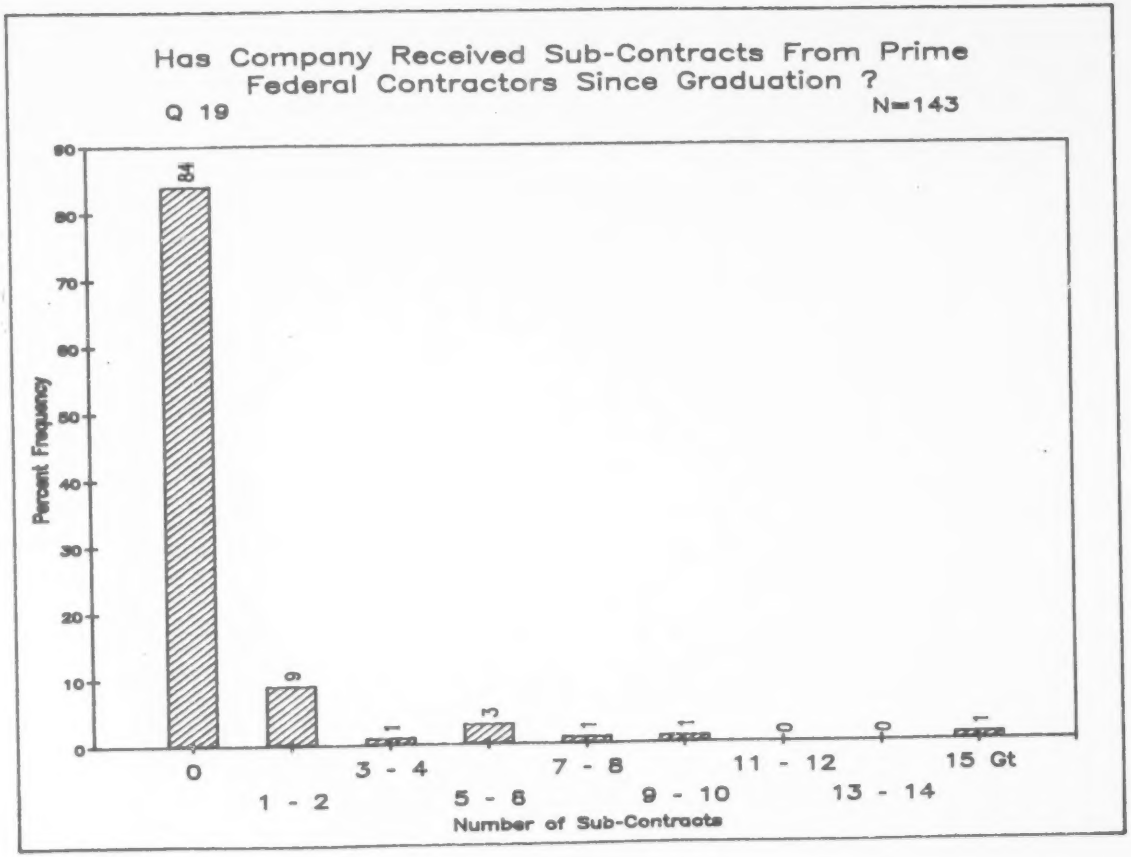

Types of Contracts Received
Number of Contracts
Q 14 16 17 18 19
N=3172
State & Local=477
15%
Federal=787
25%
9%
Prime Federal Subcontract=283
8(a) Subcontract=31 1%
50%
Commerical=1594

In both prime federal contracts and in the state and local government marketplaces, the industry distribution of firms receiving federal or state and local contracts since graduation showed a similar concentration in construction and services.

But, when asked if owners had received subcontracts from major prime contractors, 84 percent of the respondents said *no.*

See Figure 14.

Figure 14


Has Company Received Sub-Contracts From Prime Federal Contractors Since Graduation ?
Q 19
N=143
Percent Frequency
84
9
2
4
2
2
0
0
2
0
10
20
30
40
50
60
70
80
90
0
1 - 2
3 - 4
5 - 6
7 - 8
9 - 10
11 - 12
13 - 14
15 Gt
Number of Sub-Contracts

Under Public Law 95-507 the subcontracting program established in section 211 requires major prime contractors to submit subcontracting plans delineating goals for subcontracting with small and small disadvantaged businesses. Survey respondents repeatedly echoed concerns that this logical market has not materialized. As one contractor stated:

> We believe our Government has not done one *decent* thing to implement Public Law 95-507. We believe it never sent one letter to the prime contractors saying, "cut out the baloney—subcontract some of the hundreds of billions of dollars to small and minority firms." We believe you never stopped the award of one contract for failure to "find us" and "subcontract to us" or even to "ask us". This we believe is the greatest shame of all for those of us who look for a "transition" to the private sector. There is little private sector work for us, and a difficult bid process and pricing in the government sector.
>
> But with the management skills we developed in the 8(a) program, we will survive. 8(a) is very worthwhile but we believe it is not supported by the agencies and departments.

As experienced government contractors, clearly 8(a) graduates should be a logical source as subcontractors for major prime contractors, but very few of these graduates have been provided this opportunity.

In fiscal year 1985, the Small Business Administration reported that $6 billion in total procurement went to minority business. Approximately $3 billion of the awards were through the 8(a) program; the other $3 billion was through open competition, small business set-asides, or through subcontracting. (This compares to $33 billion that went to all small businesses in prime contract awards and $24 billion that were awarded through subcontractors). It is the Committee's position that more attention must be given to increasing subcontracting opportunities for minority firms, particularly 8(a) graduates.

Chapter V.—Summary of the Recommendations for Changes or Improvements in the 8(a) Program

This section presents a summary of responses to Section E of the survey (Appendix A) and additional comments provided by the graduates on the strengths and weaknesses of the 8(a) program and recommendations for its improvement.

Many respondents expressed appreciation for having had the opportunity to participate in the 8(a) program and felt it had helped their firms to grow. Others stated that Public Law 95-507 and the Congressional mandate to improve the program were commendable but full promise had not been realized. The 8(a) program was described by many as an excellent vehicle for developing minority business and should be maintained, but strengthened. This was generally the sentiment of even those who sharply criticized certain aspects of the program or felt it had not helped them significantly. A broad range of suggestions was made for improving the

structure, management and direction of the program, from administrative or personnel inadequacies to restructuring the program. The following is a synopsis of the recommendations for improving the program.

- Re-train SBA employees and select only those who will be committed to the intent of the program.
- SBA should hire personnel in all field offices that are competent and technically capable of assisting firms in contract negotiations, marketing, loan packaging and other business development needs.
- Politics and personnel biases must be removed in administering the program. Objective procedures should be developed for all portfolio firms for providing management, technical, financial and contract assistance.
- SBA must insist before certification that a business plan is developed with each firm that sets forth realistic and attainable objectives.
- Field offices should diligently monitor the firm's compliance with its business plan.
- SBA should not certify firms in certain industries in regions where contract support is not available.
- SBA should have more authority to select contracts from procuring agencies for 8(a) firms in fulfillment of the mandate in Public Law 95–507.
- Procuring agencies should be required to adhere to minority business procurement goals and the subcontracting provisions of Public Law 95–507 should be enforced.
- More timely management and technical or 7(j) assistance must be provided on a region-by-region basis.
- Provide qualified and structured business management courses and seminars, at given intervals, for all portfolio firms as a business development requirement for continued participation in the program.
- Prevent firms from becoming solely dependent on 8(a) support.
- SBA should require all portfolio firms to acquire private sector or non-sole-source contracts along with 8(a) contracts after an established period of time in the program.
- SBA should institute a transitional or phase-out program which gradually reduces a firm's dependence on 8(a) contracts and provide the expertise needed to aid firms in marketing the private sector.
- Encourage joint ventures with other 8(a) firms to build capacity for bonding, financing, management and technical assistance during the transitional phase.
- A firm should compete with other 8(a) firms for contracts during its last year in the program.
- Reduce paperwork requirements and provide training for construction contractors on cost estimating so they can bid and perform work profitably.
- The certification process must be shortened and streamlined; applicants should not be required to wait months, even years, to be certified for the program.
- Firms must be provided more concentrated management, technical and contract assistance even if the portfolio has to be re-

duced; if a firm fails to show progress, it should be removed from the program.

- Increase the workforce in SBA field offices according to the size of the portfolio; each office staff should be monitored and evaluated, on an ongoing basis, for efficiency and productiveness as related to the development of firms to attain competitive independence.
- SBA should be more thorough in its investigations and take strict measures to keep "fronts" out of the program.
- The fixed program participation term (FPPT) should be increased to allow each firm sufficient time to become independently competitive; that is, to build a business base, improve its management structure and replace sole source contracts with similar ones in size and profitability. The FPPT extension should be granted on the basis of all of these factors, not just the subjective judgment of the regional administrator.
- SBA should consider restructuring the program into two tiers: one in which start-up or smaller firms are admitted; and another in which larger, more stable firms are admitted.
- The 8(a) program should be more widely publicized by SBA.

Chapter VI.—Conclusion

After carefully weighing the major findings and total results of this survey, it is the Committee's conclusion that the SBA Section 8(a) program is an important vehicle for ensuring the inclusion of minority firms in our nation's federal procurement system and that some progress has been made in administering the program since enactment of Public Law 96-481. However, the Committee is gravely concerned that the lack of progress towards making 8(a) a true business development experience for participants, as intended by law, as well as other major deficiencies in the overall operation of the program seem to overshadow its basic intent and effectiveness.

The areas of greatest concern are:

(a) the Agency's apparent inability to deliver timely management and technical assistance to program participants although the Capital Ownership Development division of SBA was established for that primary purpose;

(b) the failure of SBA or MBDA to vigorously implement the Interagency Agreement so as to provide graduating firms transition from a sole source set-aside program to the competitive marketplace;

(c) the broad perception by many respondents that although SBA personnel are helpful, many are unable to provide the technical assistance or guidance needed in most procurement matters;

(d) certain administrative weaknesses that undermine the smooth operation of any program of this magnitude. A glaring example is the agency's difficulty in keeping accurate or updated files on program graduates and participants. This deficiency became apparent each time Committee staff requested updated information on graduates. A second group of mailings for 1986 graduates was attempted but later abandoned because the final

lists provided by SBA included more program participants than graduates.

The program has enjoyed a degree of success as demonstrated by the number of firms still operating since leaving the program. However, the fact that many of these owners did not attribute their success to the 8(a) program or so sharply criticized it as a business development vehicle is troubling to the Committee. This suggests that there is still much to be done by SBA in providing a definitive program structure through which participating firms can move, in specified timeframes, so as to be capable of competing with similar firms in their respective industries after leaving the program.

On the other hand, the Committee understands that there are extenuating circumstances over which SBA may have little or no control that hamper the success of the program. Several such situations were also cited by survey respondents and are of concern to the Committee, such as: (a) SBA's lack of authority to select procurement opportunities from major federal agencies in order to capture a steady stream of contracts for portfolio firms, which would clearly add more predictability to structuring and administering the program; (b) Section 211 of Public Law 95–507, which requires prime contractors to establish subcontracting goals for minority small businesses, has failed to significantly bolster contracting opportunities for program participants as well as graduates; and (c) staff reductions sustained by the Agency of approximately 35 percent since 1979, with an increase in the portfolio of nearly 40 percent since that time. This dramatic reduction in manpower would likely impede the progress of any operation, even if other managerial or programmatic problems did not exist.

The survey results and recommendations of owners to improve the program provide the Committee with a base of information upon which to work toward certain reforms that could enhance the operation of the program, to sustain those aspects that have proven to be effective. It is the intent of the Committee not only to utilize survey results, but to hold hearings to further pursue the issues raised and develop appropriate legislative and administrative reforms.

APPENDIX B

SECTION 8A CONTRACT AWARDS BY STATE—FISCAL YEAR 1987 [1]

State	Number of contracts	Net amount
Alaska	33	$8,817,211.49
Alabama	75	92,717,459.55
Arkansas	76	20,470,402.88
Arizona	65	56,149,969.15
California	469	300,819,321.60
Colorado	124	51,562,640.92
Connecticut	31	21,902,143.76
District of Columbia	259	74,105,318.46
Delaware	8	1,068,478.25
Florida	83	40,554,452.28
Georgia	90	38,690,954.42
Guam	2	383,358.00
Hawaii	81	4,839,714.80
Iowa	15	1,242,193.34
Idaho	20	2,432,272.56
Illinois	143	121,749,096.49
Indiana	32	14,913,601.61
Kansas	31	20,859,580.47
Kentucky	16	3,194,816.92
Louisiana	47	30,787,270.74
Massachusetts	115	45,760,443.87
Maryland	350	203,508,801.47
Maine	5	1,142,437.20
Michigan	40	9,331,527.63
Minnesota	20	4,230,377.99
Missouri	60	23,737,818.10
Mississippi	40	14,594,382.23
Montana	25	26,287,170.46
North Carolina	50	16,327,612.59
North Dakota	15	8,570,964.07
Nebraska	13	2,330,770.97
New Jersey	90	54,345,609.07
New Mexico	91	33,660,619.24
Nevada	21	5,263,465.37
New York	134	39,471,415.60
Ohio	143	109,736,316.29
Oklahoma	41	15,108,885.51
Oregon	89	11,332,541.35
Pennsylvania	105	40,433,649.61
Puerto Rico	48	7,149,172.28
Rhode Island	9	1,069,847.19
South Carolina	48	16,542,652.56
South Dakota	32	9,236,834.50
Tennessee	45	25,544,337.32
Texas	192	108,711,791.33
Utah	85	15,564,114.16
Virginia	567	276,643,721.50
Virgin Islands	9	801,926.15
Washington	122	42,366,651.60
Wisconsin	19	5,591,290.37
West Virginia	32	19,804,802.16

[1] Data provided by Small Business Administration, June 7, 1988.

APPENDIX C

MAJOR STUDIES OF 8(a) PROGRAM PROBLEMS

The SBA 8(a) Program has been the focus of numerous Congressional Oversight hearings and investigations by the GAO, the SBA Inspector General, and others. While Program problems have been repeatedly identified, lasting solutions have proved to be very elusive.

Some of the major reviews of 8(a) Program's problems are:

April 1975.—*Questionable Effectiveness of the 8(a) Procurement Program*, GAO report

January 1976.—*SBA 8(a) Contract Procurement Program*, hearing by the Senate Committee on Small Business

January 1978.—*Interagency Report and Recommendations on the Section 8(a) Program*

February 1978.—*Abuses in the SBA 8(a) Program*, a report based on 9 days of oversight hearings by the Subcommittee on Federal Spending Practices and Open Government, Senate Committee on Governmental Affairs

March 1978.—*An Analysis of How Eligibility Criteria are Applied for Participation in the 8(a) Program*, GAO report

January 1979.—*Review of Business Development Expense*, report by the SBA Office of Audit

April 1979.—*Advance Payments to 8(a) Contractors*, report by the SBA Office of Inspector General

September 1979.—*Audit on Eligibility Review of 8(a) Firms*, report by the SBA Office of Inspector General

April 1981.—*The SBA 8(a) Procurement Program—A Promise Unfulfilled*, GAO report

April 1981.—*Impact of SBA's Section 8(a) Program on Federal ADP and Other High Technology Procurements*, hearings (2 days) by the House Committee on Government Operations

May 1983.—*Business Development Expense*, study by the SBA Office of Inspector General

May 1987.—*Survey of the Graduates of the SBA Section 8(a) Minority Business Development Program*, report by the Senate Committee on Small Business

November 1987.—*Management Review: Organization and Operation of the Minority Small Business and Capital Ownership Development Program*, report for SBA by the National Academy of Public Administration

APPENDIX D

SECTION 8(a) APPEAL STATUS REPORT—FISCAL YEAR 1985

Date of Appeals	Section 8(a) firm	Procuring Agency	Description of Requirement	Final appeal decision	Date of response
Nov. 16, 1984	Systems Management	Air Force	Manufacture minicomputers	Denied	Jan. 25, 1985.
Dec. 7, 1984	Dunn & Sons Maintenance	Army	Full food service	Denied	Jan. 10, 1985.
Dec. 14, 1984	Stic-Adhesive Products Co	GSA	Manufacture enamels, flat paint and thinners	Denied	May 17, 1985.
Jan. 8, 1985	Ebon Services	Army	Facilities management	Denied	Apr. 9, 1985.
Apr. 4, 1985	Alex Munoz/J. Craig Construction Co	GSA	Construction	Denied	[1]
May 2, 1985	Environmental Health Resources and Testing	Army	Hazardous waste removal	Denied	June 17, 1985.
June 7, 1985	G&H Mechanical	VA	Construction	Denied	July 9, 1985.
June 12, 1985	J. Harian & Sons, Inc	DOI	Construction	Denied	July 22, 1985.
July 8, 1985	Velez Construction	VA	Construction	Denied	July 29, 1985.
July 8, 1985	Evanhow Construction Co	VA	Construction	Denied	July 29, 1985.
July 25, 1985	J.B. Industries	Army	Operational support services	Denied	Sept. 6, 1985.
July 25, 1985	William Cargile Contractors, Inc	Army	Construction	Denied	Aug. 22, 1985.
Aug. 16, 1985	Ozanne Construction, Inc	Navy	Construction	Denied	Oct. 9, 1985.
Aug. 23, 1985	J.T. Construction	Army	Construction	Denied	Oct. 8, 1985.
Oct. 2, 1985	Roy Littlejohn & Associates	AID	Management consulting	Denied	Oct. 17, 1985.

[1] Section 8(a) firm was allowed the opportunity to review specification, but the firm would not accept the project because it could not be performed for the dollar amount specified.

Source: Small Business Administration.

SECTION 8(a) APPEAL STATUS REPORT—FISCAL YEAR 1986

Date of appeals	Section 8(a) firm	Procuring agency	Description of requirement	Final appeal decision	Date of response
Jan. 9, 1986	HLJ	Army	KP services	Pending	
Mar. 11, 1986	AVW, Inc.	DOT	System, design fabrication	Denied	Sept. 4, 1986.
Mar. 13, 1986	Luzon Services	Army	Dining facilities attendant	Denied	May 30, 1986.
Mar. 13, 1986	Zenon Construction	DOT	Road construction	Denied	Jan. 8, 1986.
Mar. 19, 1986	Milton Guzman Construction	VA	Construction	Denied	Apr. 23, 1986.
Mar. 31, 1986	Federal Data Systems, Inc	Air Force	Computer services	Pending	
Apr. 8, 1986	CP Construction	DOI	Construction	Denied	May 15, 1986.
June 6, 1986	CQ Construction	Army	Construction	Denied	May 30, 1986.
June 17, 1986	Applied Management Services	Air Force	Mess attendant services	Sustained	July 24, 1986.
June 17, 1986	Martinez Custom Trailers	Army	Manufacture	Denied	July 22, 1986.
July 3, 1986	Bravo Manufacturing, Inc	Navy	Manufacture		
Aug. 26, 1986	Compliance Corporation	Navy	ADP management support services	Sustained	Nov. 18, 1986.
Aug. 27, 1986	Hills Capitol Security	Army	Security guard service	Denied	Sept. 26, 1986.

Source: Small Business Administration.

APPENDIX E

PROPOSED SMALL BUSINESS SIZE STANDARDS FOR CONSTRUCTION

[Dollar amounts in millions]

Standard industrial classification and description	Current size standard	Proposed size standard	Percent set-aside and 8(a) awards
1711—Plumbing, heating, and air-conditioning	$7.0	$1.25	69.9
1721—Painting, paper hanging and decorating	7.0	.50	89.6
1731—Electrical work	7.0	1.50	62.5
1741—Masonry and other stonework	7.0	1.50	68.9
1742—Plastering, drywall, and insulation	7.0	.25	67.7
1743—Terrazo, tile, marble, and mosaic work	7.0	1.25	78.7
1751—Carpentering	7.0	.75	91.1
1752—Floor laying and floor work, N.E.C.	7.0	7.75	88.2
1761—Roofing and sheet metal work	7.0	1.00	89.3
1771—Concrete work	7.0	.50	91.5
1781—Water well driling	7.0	.75	55.4
1791—Structural steel erection	7.0	4.50	45.9
1793—Glass and glazing work	7.0	1.00	89.8
1794—Excavating and foundation work	7.0	.50	84.4
1795—Wrecking and demolition work	7.0	3.75	79.8
1796—Installing building equipment, N.E.C.[1]	7.0	2.75	52.6
1799—Special trade contractor, N.E.C.[1]	7.0	2.50	51.7
1521—Single family housing construction	17.0	2.00	45.3
1522—Residential construction, N.E.C.[1]	17.0	9.75	39.0
1531—Operative builders	17.0	1.25	45.7
1541—Industrial builders and warehouses	17.0	5.25	54.6
1542—Nonresidential construction, N.E.C.[1]	17.0	3.50	64.0
1611—Highway and steel construction	17.0	4.00	53.3
1622—Bridge, tunnel, and elevated highway construction	17.0	1.75	52.6
1623—Water, sewer, and utility line construction	17.0	1.25	71.1

[1] N.E.C. = Not elsewhere classified.

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